

1 IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
2 SIXTH APPELLATE DISTRICT

3 ---000---
4

5 THE PEOPLE OF THE STATE OF)
6 CALIFORNIA,)
7 PLAINTIFF-RESPONDENT,)
8 VS.) CASE NO. CC241061
9 STEVE BADUE,)
10 DEFENDANT-APPELLANT.)

COPY

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13 REPORTER'S TRANSCRIPT ON APPEAL
14 FROM THE JUDGMENT OF THE SUPERIOR COURT
15 OF THE STATE OF CALIFORNIA, IN AND FOR
16 THE COUNTY OF SANTA CLARA
17 BEFORE THE HONORABLE RISE JONES PICHON, JUDGE

18 ---000---
19

PROCEEDINGS HELD ON FEBRUARY 3, 2003

20 VOLUME ONE

21 PAGES 1 THROUGH 6

22
23 APPEARANCES:

24 FOR PLAINTIFF-RESPONDENT: OFFICE OF THE ATTORNEY GENERAL
25 BY: DAN LUNGREN, ATTORNEY
26 GENERAL OF THE STATE OF
27 CALIFORNIA

28 FOR DEFENDANT-APPELLANT: IN PROPRIA PERSONA

1 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 SANTA CLARA COUNTY JUDICIAL DISTRICT
3 HALL OF JUSTICE FACILITY
4 BEFORE THE HONORABLE RISE JONES PICHON, JUDGE
5 DEPARTMENT NO. 36

6 ---000---

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8 OF CALIFORNIA,)
9)
10 PLAINTIFF,)
11 VS.)
12 STEVE BADUE,)
13)
14 DEFENDANT.)

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16 OF
17 PROCEEDINGS
18 FEBRUARY 3, 2003
19 VOLUME I
20 PAGES 2 THROUGH 6

22 A P P E A R A N C E S:

23 FOR THE PEOPLE: STEVEN DICK,
24 DEPUTY DISTRICT ATTORNEY
25 FOR THE DEFENDANT: RANDY DANTO,
26 DEPUTY PUBLIC DEFENDER
27 COURT REPORTER: PATRICIA NORRIS,
28 C.S.R. 8475

1 SAN JOSE, CALIFORNIA

FEBRUARY 3, 2003

2 P R O C E E D I N G S

3 THE COURT: THIS IS THE MATTER OF THE PEOPLE OF
4 THE STATE OF CALIFORNIA VERSUS STEVE BADUE.

5 MS. DANTO: RANDY DANTO ON HIS BEHALF.

6 MR. DICK: STEVEN DICK FOR THE PEOPLE.

7 MS. DANTO: YOUR HONOR, I SPOKE WITH MY CLIENT
8 DURING THE RECESS, AND MY CLIENT INDICATED TO ME THAT
9 HE'S WILLING TO GIVE UP HIS RIGHTS TO A JURY TRIAL WITH
10 THE UNDERSTANDING THAT HE IS GOING TO HAVE A COURT TRIAL.

11 THE COURT: ALL RIGHT.

12 MR. BADUE, YOUR ATTORNEY HAS INDICATED THAT YOU
13 WANT TO GIVE UP YOUR RIGHT TO A JURY TRIAL. IT IS MY
14 DUTY TO ADVISE YOU THAT THE CONSTITUTION GIVES YOU THE
15 RIGHT OF A TRIAL BY A JURY OF 12 PEOPLE, THAT IS 12
16 PEOPLE SELECTED BY YOUR ATTORNEY AND THE PROSECUTOR FROM
17 THE COMMUNITY, AND THEY WILL DECIDE THE QUESTION OF YOUR
18 GUILT OR INNOCENCE AS TO THE CHARGES FILED AGAINST YOU IN
19 THE INFORMATION.

20 YOU MUST PERSONALLY DECIDE IF YOU WANT A JURY
21 TRIAL OR IF YOU WANT TO GIVE IT UP AND HAVE A JUDGE
22 SITTING WITHOUT A JURY TO DECIDE THE QUESTION OF YOUR
23 INNOCENCE OR YOUR GUILT.

24 DO YOU KNOW WHAT A JURY TRIAL IS?

25 THE DEFENDANT: YES.

26 THE COURT: DO YOU GIVE UP YOUR RIGHT TO A JURY
27 TRIAL AND AGREE THAT THE MATTER CAN BE TRIED BY A JUDGE
28 SITTING WITHOUT A JURY?

1 THE DEFENDANT: YES.

2 THE COURT: COUNSEL, DO EACH OF YOU JOIN IN THE
3 WAIVER OF JURY TRIAL IN THIS CASE?

4 MS. DANTO: I DO, YOUR HONOR.

5 MR. DICK: I DO, YOUR HONOR, AS TO BOTH THE
6 CHARGES AND TO THE PRISON PRIOR.

7 THE COURT: AND MR. BADUE, YOU UNDERSTAND THAT
8 YOUR WAIVER OF JURY TRIAL APPLIES TO THE CHARGES AND ALSO
9 TO THE PRISON PRIOR?

10 YOU'RE GOING TO ADMIT THE CHARGES, CORRECT?

11 THE DEFENDANT: YOU'RE GOING TO LISTEN TO ALL THE
12 EVIDENCE, CORRECT?

13 THE COURT: THAT'S WHAT THAT MEANS.

14 THE DEFENDANT: THE PRISON PRIOR, TOO?

15 THE COURT: YES.

16 THE DEFENDANT: FINE.

17 THE COURT: AND DO YOU WAIVE YOUR RIGHT TO A JURY
18 TRIAL?

19 THE DEFENDANT: YES.

20 THE COURT: I WILL ACCEPT THE WAIVER OF JURY
21 TRIAL.

22 MS. DANTO: MY UNDERSTANDING IS, THE DISTRICT
23 ATTORNEY IS GOING TO BE PREPARED TO PRESENT HIS WITNESSES
24 ON WEDNESDAY MORNING, THE 5TH.

25 MR. DICK: IF THAT'S OKAY WITH THE COURT AND
26 COUNSEL?

27 THE COURT: THAT'S FINE WITH THE COURT.

28 MR. DICK: 9:00 O'CLOCK ON WEDNESDAY?

1 THE COURT: 9:00 O'CLOCK WEDNESDAY MORNING.

2 MR. DICK: I WILL HAVE THE WITNESSES AT THAT TIME.

3 THE COURT: OKAY.

4 (WHEREUPON, THE PROCEEDINGS WERE CONTINUED TO

5 WEDNESDAY, FEBRUARY 3, 2003, AT 9:00 A.M.)

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1 STATE OF CALIFORNIA)
2 COUNTY OF SANTA CLARA) SS.
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6 I, PATRICIA NORRIS, DO HEREBY CERTIFY THAT:

7 I AM AN OFFICIAL SHORTHAND REPORTER OF THE
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE
9 COUNTY OF SANTA CLARA, AND THAT AS SUCH I REPORTED IN
10 STENOTYPE THE PROCEEDINGS HAD IN THE WITHIN-ENTITLED
11 MATTER AT THE TIME AND PLACE THEREIN SET FORTH; AND THAT
12 THE SAME IS A FULL, TRUE AND CORRECT TRANSCRIPTION OF
13 SAID STENOTYPE AS REPORTED BY ME TO THE BEST OF MY
14 ABILITY.

15 I FURTHER CERTIFY THAT I HAVE COMPLIED WITH
16 CCP 237(A)(2) IN THAT ALL PERSONAL JUROR IDENTIFYING
17 INFORMATION HAS BEEN REDACTED, IF APPLICABLE.

18 DATED:

19

20

21

22

PATRICIA NORRIS, CSR NO. 8475

23

24

25

ATTENTION:

26

27

CALIFORNIA GOVERNMENT CODE
SECTION 69954 (D) STATES:

28

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TRANSCRIPT MAY, WITHOUT PAYING A FURTHER FEE TO THE
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EXHIBIT PURSUANT TO COURT ORDER OR RULE, OR FOR INTERNAL
USE, BUT SHALL NOT OTHERWISE PROVIDE OR SELL A COPY OR
COPIES TO ANY OTHER PARTY OR PERSON."

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23 ---000--- *In limine motions*

24 PROCEEDINGS HELD ON FEBRUARY 3, 2003
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VOLUME ONE

PAGES 1 THROUGH 42

APPEARANCES:

FOR PLAINTIFF-RESPONDENT: OFFICE OF THE ATTORNEY GENERAL
BY: DAN LUNGREN, ATTORNEY
GENERAL OF THE STATE OF
CALIFORNIA

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22 A P P E A R A N C E S:

23 FOR THE PEOPLE: STEVEN DICK,
24 DEPUTY DISTRICT ATTORNEY
25 FOR THE DEFENDANT: RANDY DANTO,
26 DEPUTY PUBLIC DEFENDER
27 COURT REPORTER: PATRICIA NORRIS,
28 C.S.R. 8475
(408) 882-2953

1 SAN JOSE, CALIFORNIA

FEBRUARY 3, 2003

2 P R O C E E D I N G S

3 THE COURT: THIS IS THE MATTER OF THE PEOPLE OF
4 THE STATE OF CALIFORNIA VERSUS STEVE KENT BADUE.

5 THE DEFENDANT: I HAVE NO MIDDLE NAME.

6 THE COURT: SO IT'S STEVE BADUE?

7 THE DEFENDANT: YES.

8 THE COURT: MAY I HAVE YOUR APPEARANCES.

9 MR. DICK: STEVEN DICK FOR THE PEOPLE.

10 MS. DANTO: RANDY DANTO ON BEHALF OF MR. BADUE,
11 WHO IS PRESENT IN CUSTODY.

12 CAN I REQUEST THAT HE BE UNCUFFED, YOUR HONOR?

13 THE COURT: YES.

14 THIS IS THE TIME FOR MOTIONS IN LIMINE.

15 MR. DICK, WOULD YOU BEGIN WITH YOUR MOTIONS.

16 MR. DICK: JUST ONE MOMENT, PLEASE?

17 THE COURT: YES.

18 (WHEREUPON, PAUSE IN THE PROCEEDINGS.)

19 MR. DICK: YOUR HONOR, I SUBMITTED A TRIAL BRIEF
20 WHICH INCLUDES MY MOTIONS IN LIMINE.

21 THE FIRST MOTION IS THAT IF THE DEFENDANT CHOOSES
22 TO TESTIFY, THAT HE CAN BE IMPEACHED WITH HIS PRIOR
23 CONVICTIONS, SPECIFICALLY HIS CONVICTION FOR PENAL CODE
24 SECTION 314, INDECENT EXPOSURE.

25 IN THE CASE OF PEOPLE V. BALLARD IT INDICATES THAT
26 IT'S A CRIME OF MORAL TURPITUDE.

27 THE COURT: MISS DANTO?

28 MS. DANTO: YOUR HONOR, I'M NOT FAMILIAR WITH THAT

1 CASE.

2 I'M A LITTLE SURPRISED THAT A MISDEMEANOR,
3 INDECENT EXPOSURE, QUALIFIES AS A CRIME OF MORAL
4 TURPITUDE, BUT I WOULD DEFER TO THE DISTRICT ATTORNEY.
5 I'M ASSUMING, AS AN OFFICER OF THE COURT, THAT HE'S
6 CORRECT.

7 MR. DICK: HE ALSO HAS A FELONY CONVICTION FOR
8 INDECENT EXPOSURE OUT OF STOCKTON, THAT CONVICTION TOOK
9 PLACE ON -- I BELIEVE IT'S 1999 -- MARCH 19TH, 1998. HE
10 ALSO HAS TWO MISDEMEANOR CONVICTIONS FOR INDECENT
11 EXPOSURE.

12 I HAVE NOT READ PEOPLE V. BALLARD. I SIMPLY TOOK
13 THAT CASE FROM A LIST. I CAN'T REPRESENT THAT I READ THE
14 CASE, I HAVE NOT, I SIMPLY TOOK IT OFF THE LIST.

15 THE COURT: WE CAN CERTAINLY BE SURE. I CAN PULL
16 IT RIGHT NOW AND LOOK AT IT.

17 MR. DICK: ACTUALLY, IF WE WANT TO DO THAT, WE CAN
18 READDRESS THAT TOMORROW. I CAN GO BACK AND TAKE A LOOK
19 AT IT TONIGHT.

20 THE COURT: WE WILL PASS THAT UNTIL TOMORROW
21 MORNING.

22 MR. DICK: THE DEFENDANT WAS CONVICTED OF 148.9
23 OUT OF SAN JOAQUIN COUNTY, THAT TOOK PLACE MARCH OF 2002.
24 I HAVE PROVIDED COUNSEL THE COPY OF THE CONVICTION AND
25 THE POLICE REPORTS THAT GO ALONG WITH THAT. THE
26 DEFENDANT GAVE A FALSE NAME TO AN OFFICER OF THE STOCKTON
27 POLICE DEPARTMENT.

28 I'D BE ASKING THAT BE INTRODUCED FOR TWO REASONS:

1 ONE IS THAT THAT IS A CRIME THAT GOES TOWARDS BEING
2 DISHONEST, THAT IS, GIVING A FALSE NAME TO A POLICE
3 OFFICER; SECOND, IT IS MORE INDICIA AND CIRCUMSTANTIAL
4 EVIDENCE OF THE DEFENDANT'S WILLFUL FAILURE TO REGISTER
5 BECAUSE HE IS AVOIDING LAW ENFORCEMENT BECAUSE HE IS
6 ABSCONDING FROM PAROLE.

7 THE COURT: MISS DANTO?

8 MS. DANTO: WELL, YOUR HONOR, THE DATE I HAVE A
9 CONVICTION FOR THE MISDEMEANOR 148 IS SUBSEQUENT TO THE
10 DATE OF OFFENSE IN THIS PARTICULAR INFORMATION, SO IT
11 WOULD BE SUBSEQUENT CONDUCT, NOT CONDUCT THAT HAD EXISTED
12 AT THE TIME THAT THE OFFENSE WAS COMMITTED.

13 I'M NOT AWARE THAT A MISDEMEANOR 148 IS A CRIME OF
14 MORAL TURPITUDE THAT JUSTIFIES IMPEACHMENT IF HE
15 TESTIFIES. FOR WHETHER OR NOT THAT PARTICULAR OFFENSE IS
16 ADMISSIBLE AS CIRCUMSTANTIAL EVIDENCE OF MY CLIENT'S
17 WILLFULNESS, I DISAGREE WITH THAT.

18 THE COURT: ALL RIGHT.

19 MR. DICK, IT CERTAINLY CAN BE USED FOR
20 CREDIBILITY, BUT AS FAR AS ANY INDICATION OF WILLFULNESS,
21 IT CAN'T BE USED.

22 MR. DICK: WELL, YOUR HONOR --

23 THE COURT: IF THE DATE OF THE OFFENSE FOR THE 148
24 IS AFTER THE DATE OF THE OFFENSE FOR THIS 290, THEN IT
25 CAN'T BE USED TO SHOW WILLFULNESS.

26 MR. DICK: ACTUALLY, YOUR HONOR, 290 HAS BEEN
27 DEEMED A CONTINUOUS OFFENSE BY THE COURTS, SO THE DATE
28 THAT'S IN THE COMPLAINT -- OR INFORMATION IS NOT THE LAST

1 DATE OF THE OFFENSE. THE COURTS HAVE HELD THAT A 290 IS
2 A CONTINUOUS CRIME. SO, IN OTHER WORDS, IF YOU MISS YOUR
3 ANNUAL BIRTH DATE, IT BECOMES A CONTINUOUS VIOLATION
4 UNTIL THE DATE OF THE ARREST.

5 THE REASON HE GIVES A FALSE NAME ON THE DATE OF
6 HIS ARREST IS BECAUSE HE'S TRYING TO AVOID HIS PAROLE
7 REVOCATION, WHICH TOOK PLACE IN OCTOBER, SO THE EVIDENCE
8 GOES TO SHOW THAT THE REASON WHY HE'S NOT -- WELL, I HAVE
9 TO EXPLAIN TO THE JURY, THAT THE DEFENDANT WILLFULLY
10 FAILED TO REGISTER.

11 WELL, WHY DO WE KNOW HE WILLFULLY FAILED TO
12 REGISTER, HE FAILED TO REGISTER BECAUSE HE ABSCONDED FROM
13 PAROLE, HE WAS AVOIDING LAW ENFORCEMENT.

14 WELL, WHEN HE'S CAUGHT BY LAW ENFORCEMENT, HE
15 GIVES A FALSE NAME SO THEY DON'T KNOW WHO HE IS.

16 SO THE 290 --

17 THE COURT: WAIT A MINUTE. I MUST HAVE
18 MISUNDERSTOOD WHAT MISS DANTO SAID. I THOUGHT SHE WAS
19 SAYING THAT THE ARREST FOR THIS 290 TOOK PLACE AFTER THE
20 ARREST FOR PENAL CODE SECTION 148.9.

21 MR. DICK: NO.

22 WHAT HAPPENS IS THAT HE FAILS TO REGISTER ON HIS
23 BIRTH DATE, THERE'S ALREADY A PAROLE WARRANT OUT FOR HIM,
24 THIS THEN BECOMES A WARRANT OUT FOR A 290 CASE, THE
25 WARRANT GETS SERVED ON THE 290 IN STOCKTON WHEN HE'S
26 ARRESTED ON THE 148.9.

27 THE COURT: OKAY.

28 MR. DICK: THEY GO OUT AND THEY FIND HIM, AND

1 DON'T HOLD ME TO THESE FACTS, BUT I BELIEVE THEY WERE
2 CONCERNED ABOUT 647(F).

3 THE COURT: ALL RIGHT. I MISUNDERSTOOD.

4 THE DEFENDANT: EXCUSE ME, I HAVE A QUESTION,
5 PLEASE? YOU MEAN THE FELONY WARRANT FROM SAN JOSE WAS
6 SERVED THE NIGHT I WAS ARRESTED IN STOCKTON? YES OR NO,
7 PLEASE?

8 THE COURT: ALL RIGHT. JUST A MINUTE.

9 THE DEFENDANT: THANK YOU.

10 THE COURT: MR. BADUE, YOU CAN'T SPEAK OUT LIKE
11 THAT.

12 THE DEFENDANT: MA'AM, I HAVE SOMETHING ELSE I'D
13 LIKE TO SAY.

14 THE COURT: YOU'RE WELCOME TO ASK A QUESTION IF
15 YOU NEED TO, BUT YOU HAVE TO ASK PERMISSION FIRST.

16 THE DEFENDANT: MA'AM, I HAVE A MOTION THAT I NEED
17 TO FILE. IT'S A MOTION --

18 THE COURT: MR. BADUE, I'M GOING TO STOP YOU NOW,
19 IT'S NOT YOUR TURN, SOMEONE ELSE WAS SPEAKING.

20 THE DEFENDANT: OKAY. LET ME KNOW WHEN IT'S MY
21 TURN.

22 THE COURT: I WILL DO THAT.

23 MR. DICK: YOUR HONOR, THE NEXT MOTION THAT I
24 HAVE, MY UNDERSTANDING IS THAT ONE OF THE ARGUMENTS THAT
25 THE DEFENDANT WISHES TO TALK TO THE COURT ABOUT IS
26 WHETHER OR NOT HIS CASE IS BARRED BY DOUBLE JEOPARDY OR
27 IF IT'S BARRED BY COLLATERAL ESTOPPEL.

28 DOUBLE JEOPARDY OCCURS WHEN A PERSON HAS BEEN

1 CONVICTED OF, OR CHARGED OF A CRIME AND THAT GOES THROUGH
2 JURY TRIAL, AND HE IS NOT -- HE WASN'T CHARGED WITH THE
3 290 FAILURE TO REGISTER AS A SEX OFFENDER IN STOCKTON OUT
4 OF SAN JOAQUIN COUNTY.

5 THE REASON HE WAS NOT CHARGED WITH A 290 OUT OF
6 SAN JOAQUIN COUNTY IS BECAUSE THEY DID NOT HAVE
7 JURISDICTION TO HANDLE THAT CASE. WHAT HAPPENED WAS THAT
8 HE WAS ARRESTED ON THE WARRANT OUT OF THE COUNTY, HE GAVE
9 A FALSE NAME, THEY CHARGED HIM WITH GIVING A FALSE NAME
10 TO A POLICE OFFICER, AND THAT'S WHAT HE WAS CONVICTED OF.
11 THEY DID NOT ACCUSE HIM OF VIOLATING THE SEX REGISTRATION
12 LAWS BECAUSE THE JURISDICTION FOR THAT WOULD HAVE BEEN
13 SANTA CLARA COUNTY, AND THERE'S TWO REASONS: ONE IS,
14 THAT'S WHERE HE LAST REGISTERED; AND TWO, IT'S WHERE HE
15 GOT RELEASED ON PAROLE.

16 THE SECOND ARGUMENT, I BELIEVE, IS THAT HE
17 MAY HAVE BEEN ON PROBATION OUT OF STOCKTON, OUT OF
18 SAN JOAQUIN COUNTY, AND THEY USED THE FAILURE TO REGISTER
19 AS ONE OF THE REASONS TO VIOLATE HIS PROBATION. I
20 PERSONALLY HAVE NOT BEEN ABLE TO VERIFY THAT. I WAS TOLD
21 THAT BY DEFENSE COUNSEL, AND I ASSUME THAT THAT IS WHAT,
22 IN FACT, TOOK PLACE.

23 THE U.S. SUPREME COURT, THE CALIFORNIA SUPREME
24 COURT, AND THE APPELLATE COURTS IN CALIFORNIA, AND I
25 CITED ALL OF THOSE IN MY MOTIONS, HAVE ALL RULED ON THIS
26 ISSUE. YOUR HONOR, THEY HAVE ALL HAD THE SAME EXACT
27 RULING, THAT A VIOLATION OF PROBATION IN A NEW CRIMINAL
28 OFFENSE IS NOT BARRED BY COLLATERAL ESTOPPEL. IT

1 WOULDN'T BE DOUBLE JEOPARDY BECAUSE THERE'S NOT A JURY
2 TRIAL ON THE VIOLATION OF PROBATION.

3 IN OTHER WORDS, ON THE VIOLATION OF PROBATION YOU
4 HAVE THE ISSUE HE DIDN'T REGISTER, AND THEN YOU HAVE A
5 NEW CASE, ALL THE COURTS, UNITED STATES SUPREME COURT,
6 CALIFORNIA SUPREME COURT AND APPELLATE COURTS IN
7 CALIFORNIA HAVE ALL UNIVERSALLY HELD THAT A NEW CRIMINAL
8 CHARGE IS NOT BARRED BY COLLATERAL ESTOPPEL.

9 THE COURT: BECAUSE THAT PARTICULAR CHARGE WAS
10 INCLUDED IN THE VIOLATION OF PROBATION?

11 MR. DICK: RIGHT. EXACTLY.

12 AND JOHNSON V. UNITED STATES, WHICH IS THE U.S.
13 SUPREME COURT CASE OUT OF 2000, LUCIDO V. SUPERIOR COURT,
14 WHICH IS A U.S. SUPREME COURT CASE, AND
15 CHAMBLIN V. MUNICIPAL COURT, WHICH IS AN APPELLATE COURT
16 DECISION, AND PEOPLE V. CARTER, THEY BASICALLY HAD THE
17 SAME EXACT HOLDING, IT'S NOT BARRED BY COLLATERAL
18 ESTOPPEL, THE NEW CRIMINAL OFFENSE.

19 I WOULD ASK THE DEFENDANT BE BARRED FROM ARGUING
20 TO THE JURY THAT THIS CASE IS BARRED BY DOUBLE JEOPARDY
21 OR COLLATERAL ESTOPPEL.

22 THE COURT: MISS DANTO?

23 MS. DANTO: YOUR HONOR, MY CLIENT RAISED THAT
24 ISSUE WITH ME THE FIRST TIME THAT I MET HIM AND EVERY
25 TIME AFTER THAT THAT I'VE MET HIM, AND I HAVE
26 INVESTIGATED MYSELF, PERSONALLY, THE STOCKTON CASE TO
27 VERIFY WHETHER, IN FACT, HE HAD BEEN CONVICTED OR CHARGED
28 WITH THE FAILING TO REGISTER, AND I SATISFIED MYSELF,

1 BASED UPON SEEING, I THINK, THE DOCKET AS WELL AS HAVING
2 A CONVERSATION WITH THE CLERK IN STOCKTON THAT, IN FACT,
3 HE HAD NOT BEEN CHARGED WITH THE CRIME OF FAILING TO
4 REGISTER BUT WAS ONLY CHARGED WITH THE GIVING THE FALSE
5 NAME.

6 I HAD A CONVERSATION WITH HIS PAROLE OFFICER WHO
7 INDICATED TO ME THAT IT WAS A VIOLATION. I'M UNCLEAR IF
8 IT WAS BASED ON PAROLE VIOLATION OR PROBATION VIOLATION,
9 BUT THE CIRCUMSTANCES SUBSTANTIATING THE VIOLATION
10 INCLUDED THE FAILING TO REGISTER, BUT I DO KNOW THAT THAT
11 IS NOT THE SAME AS HAVING BEEN CONVICTED OF THE FAILING
12 TO REGISTER. SO I HAVE PERSONALLY SATISFIED MYSELF THAT
13 THERE IS NOT A LEGAL DEFENSE TO BE MADE, THAT PROSECUTION
14 IS NOT BARRED BY DOUBLE JEOPARDY, NOTWITHSTANDING THAT MY
15 CLIENT HAS CONSISTENTLY INSISTED THAT THAT DEFENSE HAS TO
16 BE RAISED, AND, IN FACT, HAS TODAY PRESENTED A
17 SUBSTANTIAL PACKAGE OF WRITTEN MATERIALS THAT HE WANTS
18 FILED WITH THE COURT BASING HIS OBJECTION ON THE DOUBLE
19 JEOPARDY ARGUMENT.

20 THE COURT: ANYTHING ELSE BEFORE THE COURT RULES?

21 THE DEFENDANT: YES, I HAVE SOMETHING TO SAY.

22 NOW, WHEN I WAS ARRESTED IN STOCKTON AND I WAS
23 CHARGED WITH MY VIOLATION OF PROBATION, ON THE
24 INFORMATION THE VIOLATION OF PROBATION WAS PLACED UNDER
25 PENAL CODE 314 SUBDIVISION (1), AND YOU HAVE THAT -- SHE
26 HAS MY -- PUBLIC DEFENDER HAS A COPY OF THAT, AND IN THE
27 INFORMATION ON THE PROBATION VIOLATION THE 314 CHARGE WAS
28 THERE, AND THE PENAL CODE 290 CHARGE AND THE PENAL CODE

1 1203.2 CHARGE, PROBATION VIOLATION CHARGE, WAS ALSO
2 THERE, AND I PLEADED NO CONTEST AND ACCEPTED 120 DAYS AS
3 RECOMMENDED IN THE PROBATION VIOLATION REPORT. AND THAT
4 HAPPENED IN THE ARRAIGNMENT COURT.

5 AND THE SECOND CHARGE IS A TOTALLY DIFFERENT CASE
6 NUMBER ENTIRELY, IT'S TWO DIFFERENT CASES. THE SECOND
7 CHARGE WAS AN ARREST FOR PENAL CODE 148.9, GIVING AN
8 OFFICER A FALSE NAME. HE TOOK ME TO MY MOTHER'S HOUSE TO
9 VERIFY MY PROPER IDENTITY, THEN HE TOOK ME TO JAIL
10 BECAUSE I HAD A PROBATION WARRANT AND A PAROLE WARRANT.

11 NOW, I HAVE THE RIGHT UNDER THE UNITED STATES
12 FIFTH AMENDMENT TO PLEAD DOUBLE JEOPARDY. AND MY
13 PLEADING DOUBLE JEOPARDY IS NOT SOMETHING THAT YOU CAN
14 BAR AS A PLEA TO HAVING ALREADY BEEN PROSECUTED,
15 SENTENCED, YOU CAN'T BAR THAT AS AN AMPLE DEFENSE TO ANY
16 DEFENDANT OR ANY PERSON.

17 NOW, THE INFORMATION I'VE BROUGHT IS WHAT I WANT
18 SUBMITTED TO THE COURT AS EVIDENCE ON MY BEHALF AND IN MY
19 DEFENSE BECAUSE --

20 THE COURT: MR. BADUE --

21 THE DEFENDANT: LET ME FINISH, BECAUSE AS FAR AS
22 MY HAVING TO REGISTER AS A PENAL CODE 290(G)(1)
23 REGISTRANT, NOT PENAL CODE 290(G)(2) REGISTRANT.

24 THE COURT OF ORIGINAL JURISDICTION IS IN SAN
25 JOAQUIN COUNTY, AND I HAVE THE INFORMATION TO A PLEA
26 BARGAIN THAT I MADE ON MARCH 19TH, 1998, FOR AN ARREST
27 THAT WAS MADE TO ME ON OCTOBER 30TH, 1997.

28 THE COURT: OKAY. DO YOU HAVE PROOF OF WHAT

1 YOU'RE SAYING?

2 THE DEFENDANT: WAIT A MINUTE. I HAVE A SUBPOENA
3 THAT I WISH TO ALSO FILE THAT REQUESTS --

4 THE COURT: MR. BADUE --

5 THE DEFENDANT: LET ME FINISH, THAT REQUESTS THE
6 INFORMATION FROM THE DIFFERENT AGENCIES LISTED, ONE, TWO,
7 AND THREE, THAT'S IN CONJUNCTION WITH MY MOTION TO ADMIT
8 JUDICIAL NOTICE AND DOUBLE JEOPARDY.

9 THE COURT: ALL RIGHT. SO YOU'RE SAYING AT THIS
10 TIME YOU DON'T HAVE ANY PROOF OF WHAT YOU'RE SAYING?

11 THE DEFENDANT: I DO HAVE PROOF OF WHAT I'M
12 SAYING, BUT I TRIED TO WRITE TO THESE PEOPLE AND GET THE
13 RECORDS, BUT THEY WOULD NOT GET ME THE RECORDS. AND THE
14 ONLY WAY I CAN GET THE RECORDS IS TO SUBPOENA THE
15 RECORDS.

16 I'M NOT CAPABLE OF REPRESENTING MYSELF, BUT I'M
17 NOT DUMB AS FAR AS THE LAW GOES IN TERMS OF SIMPLE
18 REGISTRATION UNDER PENAL CODE SECTION 290(G)(1).

19 THE COURT: OKAY.

20 THE DEFENDANT: YOU KNOW, IT'S NON-VIOLENT
21 REGISTRATION, YOU KNOW, ENTIRELY. AND I'VE READ THE
22 ENTIRE PENAL CODE 290, YOU KNOW.

23 THE COURT: MISS DANTO, HAVE YOU HAD THE
24 OPPORTUNITY TO REVIEW THE PRIOR RECORDS FOR MR. BADUE?

25 MS. DANTO: YES.

26 THE COURT: DID YOU SEE ANYTHING IN THE RECORDS
27 THAT WOULD SHOW THAT THERE WAS A SEPARATE CONVICTION FOR
28 THIS 290 AND THE 148 IN THIS CASE?

1 MS. DANTO: NO, THAT WAS WHAT I CHECKED IN
2 STOCKTON.

3 MR. DICK: YOUR HONOR, I BELIEVE -- ACTUALLY, I
4 HAVE A COPY OF A CERTIFIED PRIOR.

5 I BELIEVE WHAT MR. BADUE IS SAYING IS THAT HE'S
6 NOT SAYING THAT THERE WAS A BRAND NEW CASE FOR 290, WHAT
7 HE'S SAYING IS THAT HE HAD A VIOLATION OF PROBATION IN
8 STOCKTON AND THEY USED 290 TO VIOLATE HIS PROBATION.

9 THE DEFENDANT: CORRECT, THAT'S EXACTLY WHAT I
10 SAID, AND THEY RESTATED THE ORIGINAL CHARGE OF PENAL CODE
11 314 SUBDIVISION (1), A FELONY -- FELONY, INDECENT
12 EXPOSURE IN A PUBLIC PLACE IN STOCKTON, CALIFORNIA.

13 THE COURT: MR. BADUE, I'M GOING TO LET YOU FINISH
14 WHAT YOU HAVE TO SAY NOW, BUT AFTER THAT I'M GOING TO
15 LOOK TO YOUR ATTORNEY TO TALK.

16 THE DEFENDANT: YES, MA'AM.

17 THE COURT: NOW, DO YOU AGREE WITH WHAT MR. DICK
18 HAS SAID JUST NOW THAT THE 290 WAS MENTIONED AS PART OF
19 YOUR PROBATION VIOLATION?

20 THE DEFENDANT: YES. YES, IT WAS STATED IN THE
21 INFORMATION AS ALSO GROUNDS TO VIOLATE MY PROBATION.

22 THE COURT: OKAY. I'M NOT GOING TO AGREE TO YOU
23 THAT IT WAS CALLED AN INFORMATION, OKAY.

24 THE DEFENDANT: PROBATION VIOLATION REPORT, THAT'S
25 IN HERE, TOO.

26 THE COURT: NOW, IF THE LAW SAYS -- AND I HAVE TO
27 FOLLOW THE LAW, RIGHT?

28 THE DEFENDANT: YEAH.

1 THE COURT: THAT DOES NOT MEAN THAT THERE IS A
2 SEPARATE CONVICTION FOR THE 290 OR THE 148; AND,
3 THEREFORE, THERE IS NO DOUBLE JEOPARDY AND THERE'S NO
4 COLLATERAL ESTOPPEL.

5 THE DEFENDANT: LET ME SAY THIS IN RESPONSE --

6 THE COURT: JUST A MINUTE. WHAT DO YOU WANT ME TO
7 DO?

8 THE DEFENDANT: LISTEN, MA'AM, I WAS GIVEN A COURT
9 PAPER FOR THE 148.9 WITH THE SEPARATE CASE NUMBER, AND I
10 WAS GIVEN A COURT PAPER FOR MY PROBATION VIOLATION ON THE
11 PENAL CODE 314 SUBDIVISION (1), ACCORDING TO THAT PAPER
12 THAT I WAS GIVEN ON MARCH 11TH, THAT MORNING, THAT SAYS
13 THAT THE D.A. IS COMMITTING DOUBLE JEOPARDY.

14 THE VIOLATION ON THE PROBATION -- MA'AM, THE
15 INFORMATION CONTAINED IN THE PROBATION VIOLATION REPORT
16 SAYS THAT --

17 THE COURT: I HEAR WHAT YOU'RE SAYING.

18 THE DEFENDANT: THANK YOU, MA'AM.

19 AND I HAVE THE RIGHT TO MY DEFENSE.

20 THE COURT: JUST A MINUTE. BUT THE 290 IS NOT A
21 PROBATION VIOLATION.

22 THE DEFENDANT: THAT IS CORRECT.

23 THE COURT: IT DOESN'T BAR THIS JURY TRIAL FROM
24 PROCEEDING.

25 THE DEFENDANT: I UNDERSTAND WHAT YOU'RE
26 ATTEMPTING TO COMPEL ME TO BELIEVE IN TERMS OF WHAT HE'S
27 SAYING ABOUT A COLLATERAL ESTOPPEL. NOW, THAT DOESN'T
28 BAR ME FROM ADMITTING THIS FILING AS MY DEFENSE. THANK

1 YOU, MA'AM.

2 MR. DICK: YOUR HONOR, JUST FOR THE RECORD, THE
3 DEFENDANT'S POSITION HAS BEEN RAISED, PEOPLE -- LAWYERS
4 HAVE ARGUED WHAT HE'S ARGUING BEFORE THE COURT, AND
5 PERHAPS READING FROM ONE OF THE CASES MAY HELP A BIT.
6 THE UNITED STATES SUPREME COURT, CALIFORNIA SUPREME
7 COURT, AND APPELLATE COURTS HAVE ALL HELD THAT DUE TO THE
8 PROCEDURAL NATURE OF VIOLATION OF PROBATIONS AND FOR
9 PUBLIC POLICY CONCERNS, DOUBLE JEOPARDY AND COLLATERAL
10 ESTOPPEL DO NOT BAR PROSECUTION OF NEW CRIMINAL OFFENSE
11 AFTER A PERSON HAS BEEN FOUND TO VIOLATE HIS OR HER
12 PROBATION BASED ON THE FACTS OF THE NEW CASE.

13 THE COURT: DO YOU UNDERSTAND THAT, MR. BADUE?

14 THE DEFENDANT: I UNDERSTAND WHAT YOU'RE TELLING
15 ME.

16 THE COURT: HE WAS READING THE LAW TO YOU.

17 THE DEFENDANT: MA'AM --

18 THE COURT: JUST A MINUTE.

19 DO YOU UNDERSTAND THAT?

20 THE DEFENDANT: I UNDERSTAND WHAT HE SAID.

21 THE COURT: NO, DO YOU UNDERSTAND THAT IS WHAT THE
22 LAW IS?

23 THE DEFENDANT: MA'AM, WHAT HE IS SAYING IS THAT I
24 CANNOT USE DOUBLE JEOPARDY AS AN AVID DEFENSE, I DO NOT
25 BELIEVE THAT, AND I DON'T CARE HOW MANY TIMES HE WANTS TO
26 READ THE CASE. UNLESS I READ IT FOR MYSELF AND REALIZE
27 THE CIRCUMSTANCES OF THE CASE, I AM STILL GOING TO ADMIT
28 MY DOUBLE JEOPARDY, IF THAT'S MY ONLY DEFENSE I MAY HAVE.

1 I HAVE THAT CONSTITUTIONAL RIGHT.

2 THE COURT: ALL RIGHT. BUT YOU DON'T. AND YOU
3 CAN'T ASK ME TO DO SOMETHING THAT IS AGAINST THE LAW,
4 EVEN IF YOU DON'T BELIEVE THAT IT'S TRUE.

5 MR. DICK.

6 MR. DICK: SO I WOULD ASK THE COURT AT THIS TIME
7 TO BAR THE DEFENDANT FROM ARGUING TO THE JURY THAT DOUBLE
8 JEOPARDY OR COLLATERAL ESTOPPEL BARS THIS, I'D ASK THE
9 COURT TO MAKE A FINDING THAT UNDER THE LAW, IT IS NOT
10 DOUBLE JEOPARDY OR COLLATERAL ESTOPPEL.

11 THE COURT: THE MOTION IS GRANTED.

12 MR. DICK: THE NEXT MOTION -- AND I APOLOGIZE.

13 (WHEREUPON, PAUSE IN THE PROCEEDINGS.)

14 THE COURT: WHAT DOES HE WANT?

15 THE DEFENDANT: A COPY OF THE CASE THAT HE'S
16 FILING BASED ON THE MOTION THAT YOU JUST GRANTED.

17 I HAVE THE RIGHT FOR APPEAL, DON'T I?

18 THE COURT: IF YOU APPEAL FOLLOWING YOUR JURY
19 TRIAL ALL OF THESE DOCUMENTS WILL GO TO THE COURT OF
20 APPEAL, IS THAT WHAT YOU'RE ASKING?

21 THE DEFENDANT: I'D LIKE TO READ THE CASE BECAUSE
22 I STILL WANT --

23 THE COURT: I DON'T HAVE A PROBLEM WITH PROVIDING
24 YOU WITH A COPY OF THE CASE.

25 THE DEFENDANT: THANK YOU.

26 OF WHAT THE MOTION WAS GRANTED.

27 THE COURT: THAT MEANS FROM THIS MOMENT ON YOU
28 HAVE TO BE QUIET.

1 THE DEFENDANT: OKAY, MA'AM.

2 THE COURT: MR. DICK, IF YOU'LL GIVE ME THE CASE
3 CITATION.

4 MR. DICK: YOUR HONOR, I ACTUALLY CAME TO COURT
5 WITH COPIES OF THE CASES THAT I'VE CITED, I ACTUALLY
6 HIGHLIGHTED THOSE CASES, I WOULD ASK THE COURT TO EITHER
7 MAKE COPIES OR ALLOW ME TIME TO MAKE COPIES. I DID NOT
8 ANTICIPATE NEEDING TO MAKE EXTRA COPIES.

9 I APOLOGIZE, BUT I DO HAVE -- WELL, ACTUALLY, I
10 MAY HAVE -- IF I MAY HAVE A MOMENT, PLEASE?

11 (WHEREUPON, PAUSE IN THE PROCEEDINGS.).

12 MR. DICK: I'M SORRY, I NOTICED I HAD SIX COPIES.

13 THE COURT: IF YOU DON'T MIND MAKING COPIES, I'LL
14 CERTAINLY GIVE YOU TIME.

15 MR. DICK: THAT'S FINE.

16 MAY I HAVE A MOMENT, YOUR HONOR?

17 THE COURT: YES.

18 (WHEREUPON, PAUSE IN THE PROCEEDINGS.).

19 MR. DICK: THE NEXT MOTION IN REGARDS TO JUDICIAL
20 NOTICE. THE COURT IS ALLOWED TO TAKE JUDICIAL NOTICE OF
21 IT'S FILE PURSUANT TO EVIDENCE CODE 450, 451 AND 452.

22 I'LL BE ASKING THE COURT TO TAKE JUDICIAL NOTICE
23 THAT THE DEFENDANT HAS IDENTIFIED HIMSELF AS STEVE BADUE
24 AND THERE IS A DATE OF BIRTH OF JANUARY 4TH, 1966.

25 MS. DANTO: I HAVE NO OBJECTION TO THAT.

26 THE COURT: THE MOTION IS GRANTED.

27 MR. DICK: MY NEXT MOTION IS THAT THE DEFENDANT
28 SHALL NOT BE ALLOWED TO ARGUE TO THE JURY THAT THE

1 CURRENT OFFENSE OF VIOLATING THE SEX REGISTRATION LAWS
2 SHOULD BE A MISDEMEANOR.

3 THE SECTION 290(G)(2), IT SORT OF WORKS TO THE
4 EXTENT THAT IF YOU HAVE A PRIOR 290, THE NEXT 290 IS A
5 FELONY, BUT ONCE YOU HAVE A FELONY 290, IT'S NOT
6 REDUCIBLE TO A MISDEMEANOR, IT IS NOT A WOBBLER.

7 IT'S EITHER A FELONY OR A MISDEMEANOR. IF YOU GET
8 A MISDEMEANOR, THEN THE NEXT ONE'S A FELONY, AND YOU
9 CAN'T REDUCE IT TO A MISDEMEANOR, SO I'D ASK THE
10 DEFENDANT NOT BE ALLOWED TO ARGUE TO THE JURY THAT IT
11 SHOULD BE REDUCED TO A MISDEMEANOR.

12 THE DEFENDANT: ON WHAT GROUNDS?

13 MS. DANTO: YOUR HONOR, I KNOW WHAT THE LAW IS, I
14 HAVE EXPLAINED IT TO MY CLIENT THAT IF YOU'RE CONVICTED
15 OF A MISDEMEANOR 314, FAILING TO REGISTER, THE FIRST TIME
16 IT IS A MISDEMEANOR 290; HOWEVER, IF YOU SUBSEQUENTLY
17 FAIL TO REGISTER AGAIN, THEN IT BECOMES 290 WITH A PRIOR,
18 AND THAT IS A FELONY. AND I HAVE EXPLAINED THAT TO MY
19 CLIENT.

20 THE DEFENDANT: WHERE DOES IT SAY THAT IF YOU
21 FAILED TO REGISTER A SECOND TIME THAT THE CHARGE IS A
22 FELONY?

23 THE COURT: MR. BADUE, THE STATUTE SAYS THAT.

24 THE DEFENDANT: PENAL CODE 290?

25 THE COURT: YES.

26 THE DEFENDANT: WHERE, IN THE STATUTE? PENAL CODE
27 290, ON WHAT PAGE DOES IT SAY THAT?

28 THE COURT: MR. BADUE --

1 THE DEFENDANT: YEAH.

2 THE COURT: -- THERE ARE THREE OF US WHO WENT TO
3 LAW SCHOOL.

4 THE DEFENDANT: YES.

5 THE COURT: IF THE COURT MAKES A RULING, THEN YOU
6 ACCEPT IT.

7 THE DEFENDANT: OKAY.

8 THE COURT: NOW, YOU CAN ASK YOUR ATTORNEY LATER
9 ON WHERE THAT IS IN THE PENAL CODE, OKAY?

10 THE DEFENDANT: PENAL CODE 290, REGISTRATION OF
11 SEX OFFENDERS.

12 THE COURT: MR. BADUE --

13 THE DEFENDANT: WHERE DOES IT SAY THAT?

14 THE COURT: YOU CAN TAKE THE TIME TO READ THAT.

15 THE DEFENDANT: I READ IT, MA'AM.

16 NOWHERE IN HERE DOES IT SAY A SECOND OFFENSE FOR
17 VIOLATION OF THIS CODE SECTION --

18 THE COURT: JUST A MINUTE.

19 THE DEFENDANT: -- MAY BE CHARGED AS A FELONY.

20 THE COURT: MISS DANTO, CAN YOU FIND IT FOR ME.

21 MS. DANTO: I DON'T KNOW IF HE'S GOT THE WHOLE
22 SECTION.

23 THE DEFENDANT: I HAVE THE WHOLE SECTION. YEAH,
24 THIS WHOLE SECTION, PLEASE FIND IT, I'D LIKE TO READ IT.

25 (WHEREUPON, PAUSE IN THE PROCEEDINGS.)

26 THE DEFENDANT: THE REASON I SAY THAT,
27 YOUR HONOR -- MA'AM, THE REASON --

28 THE COURT: MR. BADUE --

1 THE DEFENDANT: I KNOW, WAIT UNTIL I SPEAK TO MY
2 ATTORNEY.

3 THE COURT: YES.

4 THE DEFENDANT: OKAY.

5 (WHEREUPON, PAUSE IN THE PROCEEDINGS.)

6 (WHEREUPON, DISCUSSION HELD BETWEEN ATTORNEY AND
7 DEFENDANT.)

8 THE DEFENDANT: I WAS GIVEN THE FELONY CHARGE IN
9 SAN JOAQUIN COUNTY IN THE CITY OF STOCKTON, YOUR HONOR, I
10 PLEA BARGAINED FOR THE MISDEMEANOR REGISTRATION UNDER
11 PENAL CODE 290(G)(1), I DO NOT REGISTER UNDER PENAL CODE
12 290(B)(2), MA'AM, I AM NOT REQUIRED TO REGISTER UNDER
13 PENAL CODE SECTION 290(G)(2).

14 THE COURT: MR. BADUE, YOU SAID --

15 THE DEFENDANT: NOW, LET ME FINISH.

16 THE COURT: NO. NO. NO. NO. NO.

17 THE DEFENDANT: THE RECORD'S --

18 THE COURT: WAIT JUST A MINUTE.

19 THE DEFENDANT: YES.

20 THE COURT: WHAT DID YOU ASK?

21 THE DEFENDANT: TO SHOW ME. SHE SHOWED ME PENAL
22 CODE 290(G)(2).

23 THE COURT: YOU SAID THAT YOU WANTED TO KNOW WHERE
24 IT SAID IN THE STATUTE --

25 THE DEFENDANT: WHERE IT SAYS THAT --

26 THE COURT: JUST A MINUTE. THAT AFTER HAVING A
27 FIRST CONVICTION WHERE THE NEXT CHARGE WOULD BE A FELONY.

28 THE DEFENDANT: IT SAYS THAT IN PENAL CODE

1 290 (G) (2) .

2 THE COURT: YOU SAID IT DIDN'T SAY THAT.

3 THE DEFENDANT: MA'AM, I'M NOT -- I HEAR YOU. I
4 UNDERSTAND.

5 THE COURT: JUST A MINUTE. SO YOU ACKNOWLEDGE
6 THAT IT'S THERE?

7 THE DEFENDANT: I DO ACKNOWLEDGE THAT IT'S THERE,
8 BUT, MA'AM, I'M SAYING TO YOU I AM NOT A PENAL CODE
9 290 (G) (2) REGISTRANT.

10 MR. DICK: I UNDERSTAND THE CONFUSION.

11 YOUR HONOR, 290 (G) (2) IS THE PUNISHMENT FOR
12 VIOLATING 290. NO ONE IS A 290 (G) (2) REGISTRANT, PER SE.
13 YOU HAVE TO REGISTER PURSUANT TO 290 (A), AND THEN THEY
14 GIVE A WHOLE SERIES OF THINGS YOU HAVE TO REGISTER FOR.

15 WHAT (G) (2) SAYS, IF YOU'VE ALREADY BEEN REQUIRED
16 TO REGISTER BECAUSE -- IN THIS CASE, BECAUSE YOU VIOLATED
17 INDECENT EXPOSURE AND YOU ALSO HAVE BEEN CONVICTED ONCE
18 BEFORE FOR FAILING TO REGISTER, ONCE THOSE TWO THINGS
19 HAVE TAKEN PLACE, IF YOU VIOLATE YOUR REGISTRATION
20 REQUIREMENTS, IT'S THEN A FELONY, AND IT CAN NEVER BE A
21 MISDEMEANOR.

22 SO I THINK THAT'S WHERE THE CONFUSION IS, IS THAT
23 IN THE BEGINNING BEFORE HE SUFFERED THE 290 CONVICTION,
24 THE PUNISHMENT WOULD BE UNDER 290 (G) (1), BUT BECAUSE THE
25 DEFENDANT HAS SUFFERED A PRIOR CONVICTION, THE PUNISHMENT
26 IS ONLY UNDER 290 (G) (2), WHICH IS ONLY A FELONY.

27 THE DEFENDANT: MA'AM, THAT DOESN'T MAKE --

28 THE COURT: HOLD ON. HOLD ON.

1 THE DEFENDANT: OKAY.

2 THE COURT: YOU KNOW, YOU DIDN'T APPEAR TO BE
3 LISTENING.

4 THE DEFENDANT: I HEARD WHAT HE SAID TO YOU.

5 THE COURT: WHAT DID HE SAY?

6 THE DEFENDANT: MA'AM, HE'S TELLING ME THAT WHEN I
7 WENT TO SUPERIOR COURT DOWNTOWN ON FIRST STREET, AND
8 THINKING -- I THINK IT WAS IN 1998, THE JUDGE GAVE ME A
9 PLEA BARGAIN UNDER PENAL CODE SECTION 290, I ACCEPTED IT
10 BECAUSE IT WAS ONLY A 90-DAY SENTENCE, AND HE'S TELLING
11 ME THAT HE'S USING THAT FELONY IN THIS CASE, IN THIS
12 COUNTY, FROM A PLEA BARGAIN THAT I MADE IN A DIFFERENT
13 CIRCUMSTANCE FOR MISDEMEANOR REGISTRATION FOR THE
14 DURATION OF PROBATION IN ORDER TO CHARGE ME AS A FELONY
15 SEX OFFENDER.

16 THE COURT: JUST A MINUTE.

17 THE DEFENDANT: THAT IS GARBAGE.

18 THE COURT: IS THAT ACCURATE?

19 MR. DICK: IT IS.

20 THE DEFENDANT: THAT'S WHAT YOU'RE SAYING, AND
21 THAT'S GARBAGE.

22 THE COURT: MR. BADUE, DON'T DO THAT AGAIN.

23 THE DEFENDANT: YES, MA'AM.

24 MR. DICK: THE 290 PREVIOUS CONVICTION ACTUALLY
25 WAS NOT IN ANOTHER JURISDICTION, IT ACTUALLY WAS IN
26 SANTA CLARA COUNTY.

27 THE DEFENDANT: THAT'S WHAT I SAID, IT'S IN
28 DOWNTOWN.

1 MR. DICK: SO WHAT HAPPENS IS -- AND I CAN
2 CERTAINLY UNDERSTAND MR. BADUE'S FRUSTRATION --

3 THE DEFENDANT: I'M NOT --

4 THE COURT: MR. BADUE --

5 THE DEFENDANT: OKAY, NO.

6 MR. DICK: WHAT THE LAW SAYS IS THAT ONCE YOU HAVE
7 A CONVICTION FOR 290, ANY SUBSEQUENT CONVICTION IS A
8 FELONY, PERIOD.

9 SO THAT'S THE STATE OF THE LAW, THAT'S WHAT THE
10 LEGISLATURE SAYS THE LAW IS, WHETHER IT'S GARBAGE OR NOT
11 GARBAGE, THAT IS THE STATE OF THE LAW.

12 THE DEFENDANT: WHERE DOES THE LAW SAY --

13 THE COURT: MR. BADUE --

14 THE DEFENDANT: LET ME FINISH. AND NOT UNDER
15 PENAL CODE (G)(2) DOES IT SAY IF I'M (G)(1) REGISTRATION
16 BECAUSE I COULD BE (G)(7), THAT IF I'M (G)(1) REGISTRANT
17 WHERE IT SAYS, IF I VIOLATE PENAL CODE 290 AGAIN, I'M
18 SUBJECTED TO BE CHARGED AS A FELON.

19 IT'S BECAUSE UNDER PENAL CODE 290(G)(2), IT MEANS
20 IT IS TAKING INTO CONSIDERATION THAT I'M A VIOLENT SEX
21 OFFENDER, I'M NOT A RAPIST AND I'M NOT INDECENT EXPOSURE,
22 YOU'RE TALKING ABOUT CONVICTIONS BASED ON PLEA BARGAINS.

23 THE COURT: OKAY, MR. BADUE.

24 THE DEFENDANT: THANK YOU.

25 THE COURT: ANY MORE MOTIONS IN LIMINE?

26 MR. DICK: NOTHING FURTHER, YOUR HONOR. NO,
27 YOUR HONOR.

28 I WOULD ASK AT THIS TIME THE DEFENDANT NOT BE

1 ALLOWED TO ARGUE THAT IT SHOULDN'T BE ALLOWED THAT THESE
2 SHOULD BE REDUCED TO A MISDEMEANOR.

3 THE COURT: THE MOTION IS GRANTED.

4 NOT RIGHT NOW, MR. BADUE.

5 MR. DICK: THERE, YOU CAN HAVE A COPY OF THAT.

6 THE DEFENDANT: I ALSO HAVE A COPY OF THAT.

7 THE COURT: NOT RIGHT NOW. THAT MEANS DON'T SPEAK
8 AT ALL.

9 THE DEFENDANT: OKAY, MA'AM.

10 MR. DICK: YOUR HONOR, THERE CURRENTLY IS NO
11 CALJIC FOR VIOLATION OF 290.

12 I HAVE PROVIDED TO THE COURT AND COUNSEL A
13 PROPOSED FOUR-PRONG TEST, THE DEFENSE HAS A MOTION
14 REGARDING PREVIOUS CONVICTIONS THAT WE'LL NEED TO DISCUSS
15 TO DETERMINE -- AND YOU MIGHT WANT TO DO THAT TOMORROW
16 INSTEAD OF TONIGHT REGARDING THE PRIOR 314'S AND 290'S,
17 IT ALTERS THE JURY INSTRUCTIONS.

18 I'M GOING TO ASK THE COURT TO MAKE A FINDING AND
19 JUDICIAL NOTICE THAT WITH A 314 CONVICTION, THE DEFENDANT
20 IS A LIFE-LONG REGISTRANT, THAT IS NOT AN ISSUE, THAT'S
21 SUPPOSED TO GO TO THE JURY. IT IS AN ISSUE, ACTUALLY,
22 THE COURT CAN TAKE JUDICIAL NOTICE OF THE STATE OF THE
23 LAW. I'M GOING TO ASK THE COURT TO MAKE THAT JUDICIAL
24 FINDING.

25 AND ON THE LAST PAGE IS THAT PART OF THE
26 INSTRUCTION WHERE IT BASICALLY SUGGESTS TO THE JURY,
27 AND -- IT'S GOING TO HAVE TO BE REFINED ANYWAY IF IT'S
28 GOING TO BE GIVEN. I WILL BE ASKING THE COURT TO MAKE

1 THAT FINDING. THAT IS NOT AN ISSUE FOR THE JURY. THAT'S
2 ACTUALLY AN ISSUE FOR THE COURT TO MAKE THAT FINDING,
3 THAT'S THE INSTRUCTION THAT THE COURT GIVES, THERE'S
4 JUDICIAL NOTICE UNDER 451, EVIDENCE CODE 451. I DON'T
5 HAVE A MOTION ON THAT, THAT'S THE INSTRUCTION THAT I
6 PROPOSED.

7 THE COURT: WE WILL TAKE UP THE JURY INSTRUCTIONS
8 CLOSER TO THE END.

9 DO YOU HAVE ANY FURTHER MOTIONS IN LIMINE?

10 MR. DICK: I DO NOT, YOUR HONOR.

11 THANK YOU.

12 THE COURT: MISS DANTO?

13 MS. DANTO: YOUR HONOR, I HAD INTENDED TO REQUEST
14 THAT MY CLIENT BE PERMITTED TO ADMIT THAT HE HAD
15 PREVIOUSLY BEEN CONVICTED OF THE PRIOR 290 THEREBY
16 ELIMINATING THE D.A.'S OPPORTUNITY TO INTRODUCE THAT INTO
17 EVIDENCE, KIND OF LIKE A 666, AND THAT IS BASED ON MY
18 ASSUMPTION THAT MY CLIENT IS GOING TO BE WILLING TO ADMIT
19 THAT HE HAD PREVIOUSLY BEEN CONVICTED OF A 290.

20 THE DEFENDANT: IN OTHER WORDS, IF I AGREE TO
21 THAT, I GET TO MAKE MY MOTION BASED ON DOUBLE JEOPARDY?

22 THE COURT: NO, IT JUST MEANS THAT THE JURY WON'T
23 HEAR ABOUT YOUR PRIOR CONVICTION FOR PENAL CODE SECTION
24 290.

25 THE DEFENDANT: THEN THAT MEANS THAT I'M BEING
26 CONSIDERED AS A SEXUALLY VIOLENT PREDATOR. WHY WOULD --
27 I DO NOT WANT THEM TO REALIZE THAT I'M BEING CHARGED AS A
28 SECOND OFFENSE AND THAT IT'S BEING STATED AS A FELONY

1 UNDER PENAL CODE 290(G)(2).

2 HOW DOES THAT HELP ME, YOUR HONOR?

3 THE COURT: BECAUSE IF THEY KNOW THAT YOU HAVE THE
4 PRIOR CONVICTION, THEY MAY USE THAT TO SAY THAT YOU MOST
5 LIKELY ARE GUILTY OF A NEW ONE BECAUSE YOU DID IT BEFORE.

6 THE DEFENDANT: IT'S SIMPLY BASED ON INDECENT
7 EXPOSURE.

8 THE COURT: NO, IT'S BASED ON CONVICTION OF PENAL
9 CODE 290.

10 SOMETIMES WHEN PEOPLE HEAR THAT YOU'VE DONE IT
11 BEFORE, THEY FEEL LIKE YOU PROBABLY DID IT THIS TIME,
12 YOUR ATTORNEY'S TRYING TO KEEP THEM FROM HEARING THAT IT
13 HAPPENED BEFORE SO THAT THEY WON'T BE CONFUSED AND USE
14 THAT TO SAY YOU DID IT THIS TIME.

15 THE DEFENDANT: SO SHE'S ASKING ME TO AGREE TO
16 WHAT?

17 THE COURT: TO ADMIT THAT YOU HAVE THE PRIOR
18 CONVICTION FOR FAILING TO REGISTER SO IT DOESN'T HAVE TO
19 COME UP IN THIS TRIAL.

20 THE DEFENDANT: NO, YOUR HONOR, I'D RATHER HAVE IT
21 COME UP AND HAVE THE JURY CONSIDER IT, HONESTLY.

22 THE COURT: DID YOU UNDERSTAND WHAT I SAID?

23 THE DEFENDANT: I UNDERSTAND WHAT YOU TOLD ME.

24 THE COURT: WHAT DID I SAY?

25 THE DEFENDANT: YOU SAID THAT IT IS BETTER THAT IF
26 I ADMIT IT TO YOU.

27 THE COURT: NO, I DIDN'T SAY IT'S BETTER, I SAID
28 THAT'S WHAT YOUR ATTORNEY HAS ASKED.

1 THE DEFENDANT: MY ATTORNEY IS TELLING YOU THAT IT
2 IS BETTER THAT I ADMIT IT TO YOU, FOR WHATEVER PURPOSES,
3 HOWEVER, AND NOT TO THE JURY -- AND NOT HAVE THE JURY
4 HEAR ALL OF THAT, AND THEN THIS GOES TO -- BASED ON THAT,
5 I DON'T TESTIFY IN MY DEFENSE.

6 THE COURT: NO. NO.

7 YOU DIDN'T SOUND LIKE YOU UNDERSTOOD.

8 THE DEFENDANT: YEAH.

9 THE COURT: I SAID SOMETIMES THAT THEY HEAR -- IF
10 THEY HEAR OF A PRIOR CONVICTION FOR THE SAME THING, THEY
11 MAY USE THAT TO SAY THAT BECAUSE YOU DID IT BEFORE, THEN
12 YOU MOST LIKELY DID IT HERE.

13 THE DEFENDANT: I UNDERSTAND THAT PART, MA'AM.

14 THE COURT: YOU WANT THEM TO HAVE AN OPEN MIND.

15 THE DEFENDANT: BECAUSE THAT IS THE ONLY MANNER IN
16 WHICH I CAN ACCOUNT FOR THE EXISTING FELONY BASED ON THE
17 REQUIREMENT AND BASED ON 290.

18 THE COURT: THE JURY DOES NOT KNOW WHETHER IT
19 SHOULD BE A FELONY OR A MISDEMEANOR, THEY ARE JUST TOLD
20 THAT IT IS A FELONY. THEY'RE NOT TOLD WHY IT IS A
21 FELONY.

22 THE DEFENDANT: MA'AM, THE ONLY WAY THAT I CAN BE
23 QUALIFIED TO REGISTER UNDER PENAL CODE 290 IS THAT I'M A
24 RAPIST. NO, THANK YOU, MA'AM. I'D RATHER HAVE THEM BE
25 AWARE OF BOTH, AND THE MISDEMEANOR, TOO.

26 THE COURT: THAT'S YOUR DECISION.

27 MS. DANTO: THAT'S ACTUALLY A DIFFERENT ISSUE. I
28 THINK MR. BADUE IS CONFUSING HIS ADMISSION OF THE PRIOR

1 290 WITH HIS ADMISSION OF THE CONVICTION FOR THE 314
2 MISDEMEANOR. OKAY.

3 I WAS NOT SUGGESTING THAT MR. BADUE ADMIT THAT HE
4 WAS CONVICTED OF INDECENT EXPOSURE FOR THE VERY SAME
5 REASON THAT HE JUST SAID THAT I THINK THE JURY IS GOING
6 TO ASSUME IF THEY DON'T HEAR IT, THAT HE IS A CHILD
7 MOLESTER.

8 IF THE JURY HEARS THAT THE REGISTRATION
9 REQUIREMENT WAS ON A MISDEMEANOR INDECENT EXPOSURE, TO ME
10 THAT'S LESS NEGATIVE.

11 THE DEFENDANT: THANK YOU.

12 MS. DANTO: I WAS NOT REQUESTING THAT MR. BADUE
13 ADMIT THE CONVICTION FOR THE 314, I WAS EXPECTING THE
14 DISTRICT ATTORNEY IS GOING TO HAVE TO PROVE THAT. MY IN
15 LIMINE MOTION WAS TO HAVE MY CLIENT ADMIT ONLY THAT HE
16 HAD PREVIOUSLY BEEN CONVICTED OF A PRIOR FAILING TO
17 REGISTER.

18 THE COURT: OKAY.

19 DO YOU UNDERSTAND THAT, MR. BADUE?

20 THE DEFENDANT: YES, AND I STILL SAY THE SAME
21 THING, MA'AM, I'D RATHER PRESENT ALL OF THE PRIOR
22 CONVICTED FACTS FOR CONSIDERATION TO THE JURORS, MA'AM,
23 SIMPLY. I HAVE THAT RIGHT.

24 THE COURT: AS LONG AS YOU UNDERSTAND.

25 THE DEFENDANT: OKAY. I UNDERSTAND.

26 THE COURT: DO YOU UNDERSTAND THE DANGER OF DOING
27 THAT?

28 I MEAN, DO YOU UNDERSTAND WHAT I EXPLAINED MIGHT

1 BE A PROBLEM WITH DOING THAT?

2 THE DEFENDANT: YES.

3 THE COURT: OKAY, AS LONG AS YOU UNDERSTAND.

4 MR. DICK: YOUR HONOR, JUST SO MR. BADUE IS AWARE,
5 I AM WILLING TO STIPULATE TO THE PRIOR CONVICTIONS AS
6 WELL AS THERE WILL BE A WITNESS COMING IN TO TESTIFY
7 REGARDING THE PRIOR CONVICTIONS, REGARDING FINGERPRINT
8 ANALYSIS AND PHOTOGRAPHS AND GOING THROUGH THE CERTIFIED
9 PRIORS, THAT'S ONE WAY OF DOING IT, THE OTHER WAY OF
10 DOING IT, I'M WILLING TO ENTER INTO A STIPULATION ON THE
11 PRIOR CONVICTIONS. SO HOWEVER THE DEFENSE WANTS TO
12 HANDLE THAT, IT'S FINE WITH ME.

13 MS. DANTO: WELL, I HAD ASSUMED THAT MY CLIENT WAS
14 NOT GOING TO BE WILLING TO ADMIT IDENTITY OR ANY OF THOSE
15 KINDS OF NECESSARY ELEMENTS THE DISTRICT ATTORNEY HAS TO
16 PROVE, AND I INDICATED THAT TO MR. DICK, THAT I WAS NOT
17 GOING TO STIPULATE TO THAT, THAT MY CLIENT WAS NOT GOING
18 TO ADMIT THAT, BUT I DO WANT THE RECORD TO BE PERFECTLY
19 CLEAR THAT IT IS MY RECOMMENDATION THAT IT'S IN MY
20 CLIENT'S BEST INTEREST THAT HE ADMIT THAT HE SUFFERED THE
21 PRIOR 290, AND THAT IF HE IS NOT WILLING TO ADMIT TO
22 THAT, THEN THAT IS GOING CONTRARY TO HIS COUNSEL'S
23 RECOMMENDATION.

24 THE COURT: MR. BADUE, DO YOU UNDERSTAND THAT?

25 THE DEFENDANT: SO SHE WANTS ME TO NOT ADMIT TO
26 THE PRIOR 290?

27 THE COURT: NO, SHE WANTS YOU TO ADMIT THE PRIOR
28 290 TO THE COURT SO THAT THE JURY DOESN'T HEAR ABOUT IT.

1 THE DEFENDANT: ADMIT THAT TO THE COURT SO THAT
2 THE JURY DOESN'T HEAR ABOUT IT, I'D RATHER PRESENT THE
3 PRIOR 290'S TO THE JURY, ALSO, MA'AM.

4 BASICALLY, MA'AM, I'D RATHER GO AHEAD AND PRESENT
5 ALL OF THE MATTERS AND THE FACTS BEING PRESENTED BY THE
6 PROSECUTION TO THE JURY, AND THEN I NEED TO DEVELOP SOME
7 TYPE OF AN ARGUMENT, PLAN, AND COORDINATE WITH THE PUBLIC
8 DEFENDER SO THAT WE CAN ADDRESS ALL OF THAT TO THE JURY.

9 THE COURT: NOW, ONCE YOU STICK THAT OUT THERE,
10 YOU CAN'T EXPECT HER TO FIX IT.

11 THE DEFENDANT: APPARENTLY, MA'AM. I UNDERSTAND
12 WHAT SHE SAID.

13 THE COURT: OKAY.

14 THE DEFENDANT: THANK YOU.

15 THE COURT: ALL RIGHT.

16 MS. DANTO: JUDGE, I'M A LITTLE CONCERNED ABOUT
17 MR. BADUE'S SPECULATION AS TO HOW THE CASE IS GOING TO BE
18 CONDUCTED.

19 THE COURT: OKAY.

20 MS. DANTO: BECAUSE BASED ON THE COURT'S RULING,
21 THE COURT IS EFFECTIVELY ELIMINATING THE DEFENSE THAT
22 MR. BADUE WOULD LIKE TO PROVE TO THE JURY, WHICH I AM NOT
23 GOING TO VIOLATE THE COURT'S RULING ON.

24 THE COURT: DO YOU WANT TO TAKE A MOMENT TO TALK
25 TO HIM AND SEE IF THAT WILL BE AN ISSUE DURING THE TRIAL?

26 THE QUESTION IS WHETHER OR NOT HE WILL BE ABLE TO
27 LIVE WITH THE COURT'S RULING.

28 MS. DANTO: WELL, I HAVE MY DOUBTS.

1 THE DEFENDANT: BASICALLY, MA'AM, BASICALLY -- I
2 HAVE SOMETHING I'D LIKE TO SAY, BASICALLY I DO NOT HAVE A
3 DEFENSE, I DO NOT HAVE AN AMPLE DEFENSE THAT WILL PROVE
4 THAT I WAS ALREADY PROSECUTED ON PROBATION VIOLATION
5 BASED ON THE PROSECUTION'S STATEMENTS.

6 NOW, THE ONLY DEFENSE THAT I HAVE, NEEDLESS TO
7 SAY, IS ON APPEAL, WHICH MEANS THIS: THAT THE ONLY WAY
8 THAT I CAN PROVE THE IRREGULARITY OR THE ERRONEOUSNESS OF
9 THE PROCESS THAT THE DISTRICT ATTORNEY IS LITIGATING THAT
10 I AM ABLE TO SHOW THAT A PLEA BARGAIN AGREEMENT DOES NOT
11 STAND AS A NEGOTIABLE CONVICTION. AND THAT'S THE ONLY
12 DEFENSE THAT I HAVE. BUT THERE'S NO DEFENSE THAT I HAVE
13 WHERE I CAN STOP THE JURY FROM RULING IN THE DISTRICT
14 ATTORNEY'S FAVOR. I MEAN THAT'S LUDICROUS, THAT'S
15 RIDICULOUS.

16 MS. DANTO: WELL, THAT'S WHAT I TRIED TO EXPLAIN
17 TO MY CLIENT OVER THE ENTIRE PERIOD OF TIME THAT I'VE
18 REPRESENTED HIM, THAT I DIDN'T SEE THAT THERE WAS A
19 FACTUAL DEFENSE TO THIS CASE.

20 THE DEFENDANT: THERE IS NONE, NOT BASED ON THAT.
21 I DO NOT HAVE A DOUBLE JEOPARDY DEFENSE, THERE IS NO
22 OTHER DEFENSE. LET'S HAVE THE JURY HAVE ALL THE
23 PROSECUTION'S STATEMENTS AND PRIOR CONVICTIONS AND
24 EVERYTHING ELSE AND LET THE JURY DECIDE, THEN I CAN
25 APPEAL, AND THAT SOUNDS REALISTIC.

26 MR. DICK: JUST SO MR. BADUE'S AWARE, THE JURY
27 CAN'T CONSIDER DOUBLE JEOPARDY, THAT'S WHAT THE MOTION
28 IS.

1 THE COURT: IT APPEARS TO ME THAT HE UNDERSTANDS
2 THAT.

3 MR. DICK: OKAY.

4 THE COURT: ANY OTHER MOTIONS IN LIMINE?

5 MS. DANTO: YOU HONOR, MY CLIENT IS CHARGED WITH
6 HAVING A PRIOR PRISON COMMITMENT, AND I WOULD ASK THAT BE
7 BIFURCATED.

8 MR. DICK: ACTUALLY, THE DIFFICULTY WITH THAT IS,
9 IS THAT THAT'S THE MOTIVE FOR THE WILLFULNESS AND --
10 ACTUALLY, I THINK WE TALKED ABOUT THIS BRIEFLY IN THE
11 MOTIONS IN LIMINE THAT I INTEND TO CALL THE DEFENDANT'S
12 PAROLE OFFICER WHO WILL TESTIFY THAT THE DEFENDANT WAS
13 RELEASED FROM PRISON ON OCTOBER 10TH, 2001, AND
14 ABSCONDED, AND THAT'S THE WILLFULNESS BEHIND THE FAILURE
15 TO REGISTER. SO THE PRISON PRIOR IS A PRIOR UNDER 667.5
16 SUBSECTION (B).

17 I CERTAINLY CAN PROVIDE A CERTIFIED COPY OF 11350
18 CONVICTION AFTER TRIAL, I HAVE NO PROBLEM DOING THAT, WE
19 CAN DO THAT IN FRONT OF THE JURY, OR HOWEVER COUNSEL
20 WANTS TO HANDLE THAT, BUT IN TERMS OF MY CASE IN CHIEF,
21 THE FACT THAT HE WAS RELEASED FROM PRISON ON OCTOBER OF
22 2001, THAT GOES TO THE WILLFULNESS UNDER 290.

23 MS. DANTO: I DON'T KNOW THAT THE JURY NECESSARILY
24 HAS TO BE ADVISED OF THE FACT THAT HE HAD BEEN
25 SUBSEQUENTLY RELEASED FROM PRISON AT THAT PARTICULAR
26 TIME, I THINK THAT THE WITNESS COULD TESTIFY THAT AS A
27 PARTICULAR DATE HIS REQUIREMENT THEN TO REGISTER WAS
28 TRIGGERED.

1 WITHOUT NECESSARILY GOING INTO THE SPECIFICATIONS
2 THAT HE WAS, IN FACT, A PAROLE OFFICER OR THAT MY CLIENT
3 WAS NECESSARILY RELEASED FROM PRISON, I DON'T THINK THAT
4 THE REGISTRATION REQUIREMENT IS TRIGGERED BY HIS RELEASE
5 FROM CUSTODY.

6 MR. DICK: THAT DOES EXPLAIN THE WILLFULNESS. THE
7 REASON THAT HE DOESN'T REGISTER IS BECAUSE HE'S GOT A
8 PAROLE VIOLATION, HE ABSCONDS FROM PAROLE, THAT'S WHY HE
9 DOESN'T REGISTER ON HIS BIRTHDAY, HE ABSCONDS FROM HIS
10 PAROLE OFFICER, SO THAT'S THE REASON WHY.

11 THE ANNUAL UPDATE SIMPLY SAYS THAT HE HAD TO
12 REGISTER, AND HE JUST DOESN'T EXPLAIN TO THE JURY WHY HE
13 WOULD MISS HIS 2002 ANNUAL UPDATE. THE REASON WHY HE
14 MISSED THE 2002 ANNUAL UPDATE IS BECAUSE HE ABSCONDED AND
15 HE WAS HIDING FROM LAW ENFORCEMENT.

16 THE OTHER TWIST IS THAT HE HAD TO REGISTER WITHIN
17 FIVE DAYS OF HIS RELEASE FROM CUSTODY, HE DIDN'T DO THAT
18 EITHER. THAT SHOULD HAVE BEEN CHARGED TO THE COMPLAINT.
19 IT WASN'T PROVED UP AT PRELIM. THAT'S A SEPARATE ISSUE
20 COMPLETELY. SO THE FACT THAT HE WAS RELEASED FROM PRISON
21 IS EXTREMELY RELEVANT BECAUSE IT EXPLAINED WHY HE DOESN'T
22 REGISTER, HE IS ABSCONDING FROM PAROLE RIGHT AFTER HE GOT
23 RELEASED FROM PRISON.

24 THE COURT: IS IT NECESSARY TO USE THE WORD PRISON
25 RATHER THAN CUSTODY. AND I'M NOT EVEN GOING TO SAY THAT
26 YOU DON'T HAVE TO USE THE WORD PAROLE, YOU CAN USE THE
27 WORD PAROLE AND GO AHEAD AND INTRODUCE THE PAROLE OFFICER
28 USING HER REAL TITLE, IF THE JURY PUTS THAT TOGETHER, WE

1 CAN'T AVOID THAT, BUT DO YOU KNOW THAT YOU CAN JUST USE
2 THE WORD CUSTODY INSTEAD OF THE WORD PRISON?

3 MR. DICK: MY ONLY CONCERN IS THAT THE REASON HE
4 DOESN'T REGISTER IS BECAUSE HE DOESN'T WANT TO GO BACK TO
5 PRISON ON THE PAROLE VIOLATION.

6 I UNDERSTAND WHAT THE COURT'S SAYING IS, COULD YOU
7 SIMPLY SAY HE DIDN'T GO BACK INTO CUSTODY ON THE PAROLE
8 VIOLATION. INSTEAD OF GOING BACK TO PRISON ON THAT
9 PARTICULAR -- I MEAN, I WANT THE JURY TO KNOW THE REAL
10 REASON WHY, BUT IF THE COURT FEELS IT'S 352, I'LL SUBMIT
11 ON THAT ISSUE.

12 THE COURT: OKAY. THEN THE MOTION TO BIFURCATE IS
13 GRANTED.

14 AND THEN THE PEOPLE APPEAR TO HAVE AGREED TO USE
15 THE WORD CUSTODY RATHER THAN PRISON.

16 MR. DICK: THE BIFURCATION IS ON THE 667.5(B), SO
17 I CAN'T PROVE THE PRIOR CONVICTION PRISON SENTENCE;
18 HOWEVER, I COULD HAVE A PAROLE OFFICER SAY, I AM A PAROLE
19 OFFICER, HE WAS RERELEASED FROM CUSTODY ON OCTOBER 10TH,
20 AND THEN GO FROM THERE, JUST NOT THE WORD PRISON.

21 THE COURT: YES.

22 THE DEFENDANT: I OBJECT BECAUSE IT APPEARS --

23 THE COURT: WAIT JUST A MINUTE.

24 ARE THERE ANY OTHER MOTIONS IN LIMINE?

25 MS. DANTO: I DON'T HAVE ANY OTHER ONES.

26 THE COURT: NOW --

27 THE DEFENDANT: I OBJECT TO THE BIFURCATION.

28 THE COURT: WHEN THE JURY COMES, YOU'RE NOT

1 ALLOWED TO DO THAT ANYMORE.

2 THE DEFENDANT: FINE.

3 THE COURT: DO YOU UNDERSTAND?

4 THE DEFENDANT: UH-HUH.

5 THE COURT: ALL RIGHT. AND IF YOU CONTINUE TO DO
6 THAT AFTER I HAVE TOLD YOU NOW TO STOP --

7 THE DEFENDANT: YEAH.

8 THE COURT: -- WHAT DO YOU THINK WILL HAPPEN?

9 THE DEFENDANT: I DON'T KNOW WHAT WILL HAPPEN,

10 MA'AM.

11 THE COURT: YOU'LL BE EXCLUDED AND YOUR TRIAL WILL
12 GO ON WITHOUT YOU.

13 THE DEFENDANT: OKAY.

14 THE COURT: OKAY.

15 NOW, WE DON'T WANT THAT TO HAPPEN, MR. BADUE,
16 RIGHT?

17 THE DEFENDANT: UH-HUH.

18 THE COURT: EVEN THOUGH YOU MAY NOT LIKE A RULING
19 THAT I MAKE, IT'S MY DUTY TO MAKE THE RULING AND THEN YOU
20 HAVE TO ABIDE BY IT, IF YOU DON'T LIKE IT AT THE END, YOU
21 CERTAINLY MAY INCLUDE THAT IN YOUR APPEAL.

22 SO YOU HAVE A WAY TO HAVE EVERYTHING THAT I DO
23 REVIEWED BY A HIGHER COURT, SO YOU HAVE TO ACCEPT MY
24 RULINGS AND WHEN I MAKE THEM.

25 THE DEFENDANT: FINE.

26 I OBJECT TO THE BIFURCATION BECAUSE I THINK IT
27 FALSELY MISLEADS THE JURY TO ASSUME OR TO CONCLUDE -- IT
28 LEADS THEM TO CONCLUDE THAT I WAS LIKE DISCHARGED OR

1 RELEASED FROM PRISON OR CUSTODY AND THAT I HAD A
2 LIFE-LONG REGISTRATION OR SOMETHING, AND THAT THE
3 CIRCUMSTANCES OF MY PLEADING THIS OR THAT, MORE OR LESS,
4 I THINK IT FALSIFIES THE VALIDITY.

5 THE COURT: ACTUALLY, THE MOTION TO BIFURCATE JUST
6 MEANS THAT THE JURY WILL HEAR ABOUT THAT PRISON TERM
7 AFTER THEY'VE ALREADY -- NO, WAIT, IT MEANS THEY'LL HEAR
8 ABOUT THE PRIOR PRISON TIME AFTER THEY'VE MADE A DECISION
9 ON THE 290 AND THE 148.9.

10 THE DEFENDANT: UH-HUH.

11 THE COURT: ARE YOU ASKING THAT THEY HEAR ABOUT IT
12 AT THE SAME TIME AS THEY HEAR --

13 THE DEFENDANT: YES. YES.

14 MS. DANTO: JUDGE, I DON'T THINK THAT'S A DECISION
15 MY CLIENT GETS TO MAKE, WITH ALL DUE RESPECT.

16 THE DEFENDANT: BECAUSE I'M UNDER THE IMPRESSION
17 THAT THAT IS FAIR TO ME ON APPEAL, THE SAME WAY THAT NOW
18 I WANT TO ASK YOU --

19 THE COURT: WELL, I'LL TELL YOU WHAT, I WILL
20 RESERVE A RULING ON THAT, AND SEE IF THE DEFENDANT'S
21 OBJECTION TO BIFURCATION, IF HE HAS THAT RIGHT TO KEEP IT
22 FROM HAPPENING.

23 I WILL TAKE THAT UNDER SUBMISSION.

24 THE DEFENDANT: NOW, I HAVE ONE LAST THING TO ASK,
25 MA'AM, BEFORE YOU GET STARTED WITH THE JURY, LET ME
26 FINISH THE MOTION ON THE SUBPOENA DUCES TECUM UNDER
27 EVIDENCE CODE 451, PENAL CODE 1985 AND PENAL CODE SECTION
28 1987.5, AND THE SUBPOENA IS FOR THE CITY CLERK'S OFFICE

1 IN STOCKTON, THE CORRECTIONS DEPARTMENT IN SAN JOSE ON
2 COLEMAN AVENUE, AND A VOCATION INSTITUTION IN TRACY, THE
3 INFORMATION THAT I NEEDED FROM THEM IS BASICALLY
4 DESCRIBED IN THIS.

5 CAN I HAVE THIS ADMITTED?

6 THE COURT: WHAT IS THE INFORMATION THAT YOU WANT?

7 THE DEFENDANT: THE INFORMATION IS, NUMBER ONE,
8 THE CHARGES IN THE PROBATION REPORT -- THAT THE CHARGES
9 WERE PENAL CODE 314, PENAL CODE 290, (G)(1), PENAL CODE
10 SECTION 1203.2; AND NUMBER TWO, THE CHARGES IN THE PAROLE
11 REPORT, HEALTH AND SAFETY CODE 11350(A).

12 THE COURT: WHEN THE PAROLE OFFICER COMES, WILL
13 SHE HAVE THAT DOCUMENT WITH HER?

14 MR. DICK: I'M NOT SURE WHAT DOCUMENT --

15 THE COURT: PETITION TO REVOKE HIS PAROLE.

16 MR. DICK: SHE MAY OR MAY NOT. I CAN CALL HER AND
17 ASK HER TO BRING IT.

18 THE COURT: NOW, MR. BADUE, DID YOU UNDERSTAND
19 THAT?

20 THE DEFENDANT: YEAH.

21 WILL YOU LET ME CONCLUDE, THOUGH?

22 THE COURT: WHAT DOES THAT MEAN?

23 WHAT DOES THAT MEAN?

24 THE DEFENDANT: YEAH, THERE ARE TWO MORE.

25 THE COURT: WHAT DOES THAT MEAN?

26 THE DEFENDANT: YOU ASKED ME IF I HEARD HIM?

27 THE COURT: WHAT DID HE SAY?

28 THE DEFENDANT: ABOUT THE PAROLE REPORT, I SAID

1 YEAH, I HEARD HIM.

2 THE COURT: WHAT DID HE SAY?

3 THE DEFENDANT: THAT SHE'LL PROBABLY HAVE IT WITH
4 HER.

5 AND THERE'S ITEM NUMBER THREE IN THE MOTION TO
6 SUBPOENA, ITEM NUMBER THREE IS A WARRANT NOTICE UNDER
7 PENAL CODE 290 THAT WAS SERVED TO ME BY A MISS JOHNSON
8 (PHONETIC) ON MAY 16TH, 2002, FOR THE SAN JOSE POLICE
9 DEPARTMENT, AND I ALSO NEED A COPY OF THAT, AND THAT'S IN
10 THE CITY OF TRACY.

11 THE COURT: I DON'T KNOW WHAT THAT IS.

12 THE DEFENDANT: WELL, BASICALLY WHAT I'M TRYING TO
13 DO IS GET MY MOTION TO SUBPOENA THESE DOCUMENTS SO THAT
14 THEY CAN BE PUT ON THE COURT'S RECORD FOR PURPOSE OF MY
15 APPEAL. I MAY NOT BE ABLE TO USE THIS AS EVIDENCE IN MY
16 DEFENSE, BUT I CAN USE IT ON THE BASIS OF GROUNDS TO
17 APPEAL.

18 I CAN DO THAT.

19 THE COURT: YOU HAVE TO DISCUSS THOSE THINGS WITH
20 YOUR APPELLATE ATTORNEY.

21 AS FAR AS THE SUBPOENA, THE COURT IS NOT GOING TO
22 ISSUE THAT.

23 THE DEFENDANT: ALL RIGHT. THAT WILL STAY ON THE
24 RECORD, MA'AM, WHAT YOU'RE SAYING TO ME NOW.

25 THE COURT: MR. BADUE, DO YOU REALIZE THAT
26 EVERYTHING IS ON THE RECORD?

27 THE DEFENDANT: THANK YOU.

28 I'M FINISHED.

1 MS. DANTO: JUDGE, THERE IS ONE ISSUE THAT I DON'T
2 THINK THAT WE HAVE ADDRESSED AND THAT IS WITH RESPECT TO
3 MY CLIENT DRESSING OUT, I INDICATED TO THE COURT IN
4 CHAMBERS THAT MR. BADUE IS REFUSING TO DRESS IN STREET
5 CLOTHES, EVEN THOUGH I HAVE OFFERED TO ARRANGE FOR THEM
6 TO BE FURNISHED, AND HE INDICATES THAT HE WANTS TO GO TO
7 TRIAL WEARING HIS JAIL CLOTHES, THAT'S OBVIOUSLY AGAINST
8 MY RECOMMENDATION, BUT I WANTED THE COURT TO BE AWARE OF
9 THAT, AND I WANT THE RECORD TO BE PERFECTLY CLEAR ON THAT
10 ISSUE.

11 THE COURT: MR. BADUE, DO YOU UNDERSTAND THAT?

12 THE DEFENDANT: YEAH.

13 THE COURT: IT LOOKS LIKE WE HAVE A COUPLE MATTERS
14 LEFT TO COMPLETE TOMORROW MORNING, THAT'S REGARDING THE
15 USE OF THE PRIOR CONVICTION OF THE 148.9 FOR IMPEACHMENT
16 AND ALSO THE DEFENDANT'S ABILITY TO OBJECT TO THE MOTION
17 TO BIFURCATE.

18 MS. DANTO: I THINK IT WAS 314.

19 MR. DICK: 314.

20 THE COURT: I'M SORRY, 314. ALL RIGHT.

21 OFF THE RECORD, PLEASE.

22 (WHEREUPON, THERE WAS A DISCUSSION HELD OFF THE
23 RECORD, NOT REPORTED.)

24 THE COURT: WE'LL GO BACK ON THE RECORD.

25 THE DEFENDANT: I REALLY WANT TO PUT THIS ON THE
26 RECORD. FOR PURPOSE OF MY APPEAL, I WANTED TO KNOW IF I
27 HAVE A PETITION FOR HABEAS CORPUS, IF I CAN JUST FILE IT
28 WITH THE CLERK, SIMPLY?

1 THE COURT: YOU CANNOT DO A WRIT OF HABEAS CORPUS
2 RIGHT NOW.

3 THE DEFENDANT: I MEAN, WHEN THE TRIAL BEGINS.

4 THE COURT: NO.

5 YOU CAN'T DO IT BEFORE THE CONVICTION.

6 THE DEFENDANT: BUT I HAVE TO DO IT BEFORE THE
7 CONVICTION.

8 THE COURT: YOU CANNOT DO IT BEFORE THE
9 CONVICTION.

10 THE DEFENDANT: I DON'T WANT TO DO THE WRIT OF
11 HABEAS CORPUS AS AN APPEAL, I'VE ALREADY TRIED THAT IN
12 THE PAST, IT DOESN'T WORK, BUT WHAT I WANT TO DO IS A
13 WRIT OF HABEAS CORPUS FOR THE COURT'S RECORD, THAT'S ALL.

14 THE COURT: THIS ISN'T THE RIGHT TIME FOR THAT.

15 THE DEFENDANT: I MEAN, WHEN THE TRIAL BEGINS, I
16 CAN DO THAT, CORRECT?

17 THE COURT: THAT STILL WON'T BE THE RIGHT TIME.

18 THE DEFENDANT: WHY NOT, MA'AM? I'M NOT
19 UNDERSTANDING YOU. OH, YOU MEAN SIMPLY SEND IT IN THE
20 MAIL OR SOMETHING?

21 THE COURT: NO, BECAUSE IT'S NOT THE APPROPRIATE
22 TIME TO FILE A WRIT OF HABEAS CORPUS.

23 THE DEFENDANT: OKAY. OKAY. OKAY. SO SIMPLY I
24 JUST CAN'T FILE THIS OR THE RECORD WON'T REFLECT THAT I
25 WANTED TO USE DOUBLE JEOPARDY AS MY DEFENSE?

26 THE COURT: OH, THE RECORD DOES REFLECT THAT.

27 THE DEFENDANT: THANK YOU, MA'AM.

28 CAN I HAVE A COPY OF THAT PAPER, THE ONE THAT

1 SAYS -- BARRING ME FROM USING DOUBLE JEOPARDY AS
2 COLLATERAL?

3 THE COURT: I AM DOING THAT.

4 YOU WANT A COPY OF HIS MOTION?

5 THE DEFENDANT: YES.

6 THE COURT: WHY DON'T YOU ASK MISS DANTO AND
7 SHE'LL GIVE YOU A COPY OF THAT.

8 THE DEFENDANT: AND I'LL WAIT FOR THE CASES, TOO.

9 THE COURT: MISS DANTO MOST LIKELY WILL GIVE YOU A
10 COPY OF THE MOTIONS TOMORROW.

11 THE DEFENDANT: JUST THE CASES THEN.

12 THE COURT: YES, FOR TODAY.

13 (WHEREUPON, DISCUSSION HELD BETWEEN ATTORNEY AND
14 DEFENDANT.)

15 (WHEREUPON, JURY TRIAL TO RECONVENE FEBRUARY 5,
16 2003.)

17 -----000-----
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28

1 STATE OF CALIFORNIA)
2 COUNTY OF SANTA CLARA) SS.
3
4
5

6 I, PATRICIA NORRIS, DO HEREBY CERTIFY THAT:

7 I AM AN OFFICIAL SHORTHAND REPORTER OF THE
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE
9 COUNTY OF SANTA CLARA, AND THAT AS SUCH I REPORTED IN
10 STENOTYPE THE PROCEEDINGS HAD IN THE WITHIN-ENTITLED
MATTER AT THE TIME AND PLACE THEREIN SET FORTH; AND THAT
THE SAME IS A FULL, TRUE AND CORRECT TRANSCRIPTION OF
SAID STENOTYPE AS REPORTED BY ME TO THE BEST OF MY
ABILITY.

11
12 I FURTHER CERTIFY THAT I HAVE COMPLIED WITH
13 CCP 237(A)(2) IN THAT ALL PERSONAL JUROR IDENTIFYING
INFORMATION HAS BEEN REDACTED, IF APPLICABLE.

14 DATED:

15
16
17

18 _____
19 PATRICIA NORRIS, CSR NO. 8475
20
21

22 ATTENTION:

23 CALIFORNIA GOVERNMENT CODE
24 SECTION 69954(D) STATES:

25 "ANY COURT, PARTY, OR PERSON WHO HAS PURCHASED A
TRANSCRIPT MAY, WITHOUT PAYING A FURTHER FEE TO THE
26 REPORTER, REPRODUCE A COPY OR PORTION THEREOF AS AN
EXHIBIT PURSUANT TO COURT ORDER OR RULE, OR FOR INTERNAL
27 USE, BUT SHALL NOT OTHERWISE PROVIDE OR SELL A COPY OR
COPIES TO ANY OTHER PARTY OR PERSON."
28

COPY

1 TO THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
2
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6
SIXTH APPELLATE DISTRICT

7 THE PEOPLE OF THE STATE OF CALIFORNIA,

8 PLAINTIFF AND RESPONDENT, No. H025695

9 VS. No. CC241061

10 STEVEN BADUE,

11 DEFENDANT AND APPELLANT.

12
13 ---oo---

14 REPORTER'S TRANSCRIPT ON APPEAL
15 FROM THE JUDGMENT OF THE SUPERIOR COURT
16 OF THE STATE OF CALIFORNIA, IN AND FOR
17 THE COUNTY OF SANTA CLARA
18 HONORABLE RISE PICHON, JUDGE

19 Volume 2

20 Pages 43 - 80

21 February 5, 2003

22
23 A P P E A R A N C E S :

24 FOR THE APPELLANT: SIXTH DISTRICT APPELLATE PROGRAM
25 100 N. Winchester Blvd., #310
Santa Clara, CA 95050

26 FOR THE RESPONDENT: OFFICE OF ATTORNEY GENERAL
455 Golden Gate Avenue
Room 11000
San Francisco, CA 94102

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CLARA
BEFORE THE HONORABLE RISE PICHON, JUDGE

-----o0o-----

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

No. CC241061

vs.

10 STEVEN BADUE,

Defendant.

13 ---oo---

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Held on February 5, 2003

APPEARANCES:

22 FOR THE PEOPLE: STEVEN DICK
23 DEPUTY DISTRICT ATTORNEY

24 FOR THE DEFENDANT: RANDY DANTO
25 DEPUTY PUBLIC DEFENDER

26 REPORTED BY: CINDI M. JOHNSON, CSR
27 CERTIFICATE NO. 10125

28 | P a g e

1 I N D E X O F W I T N E S S E S

2

3

4 WITNESSES: Direct Cross Redirect Recross

5 For the People:

6 Teresa McDaniel 48

7 Francis Gallegos 53

8 Trak Keo 62

9 Richard Peretti 67

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1 San Jose, California

February 5, 2003

2

3 PROCEEDINGS

4

5 THE COURT: Good morning. This is the Court trial
6 of Steve Badue. May have I have appearances, please, for
7 the record.

8

9 MR. DICK: Good morning. Steve Dick for the
10 People.

11

12 MS. DANTO: Randy Danto appearing on behalf of
13 Mr. Badue who is present.

14

15 THE COURT: We have already had motions in limine.
16 Is there anything else that you need to raise prior to the
17 beginning of the trial?

18

19 MS. DANTO: No, Your Honor.

20

21 MR. DICK: No, thank you, Your Honor.

22

23 THE COURT: And would counsel like to make any
24 opening statement.

25

26 MR. DICK: People waive opening statement, Your
27 Honor.

28

MS. DANTO: Likewise.

29

30 THE COURT: Please proceed, Mr. Dick.

31

32 MR. DICK: Your Honor, pursuant to Evidence Code
33 450, 452 and 451, the People would ask the Court to take
34 judicial notice of its files that the defendant in this
35 matter has identified himself as Steve Badue with a date of
36 birth of January 14, 1966.

37

38 THE COURT: And I believe we have already
39 discussed that in the motions in limine.

1 MS. DANTO: Yes.

2 THE COURT: Therefore I will take judicial notice
3 of the court's file of those facts.

4 MR. DICK: Your Honor, I have in my hand what's
5 previously been marked as People's One through Five for
6 purposes of identification. I have shown them to defense
7 counsel. They appear to be certified copies of prior
8 convictions for one Steve Badue for a conviction of a 148.9
9 and 11350, a PC 290, PC 314.1 -- and a 314.1 on two separate
10 instances. I ask that those be moved into evidence as
11 People's One through five.

12 THE COURT: Is there any objection?

13 MS. DANTO: I think those are certified copies so
14 I have no objection.

15 THE COURT: People's Exhibits marked One, Two,
16 Three, Four and Five are received into evidence.

17 (People's Exhibits number One, Two, Three, Four
18 and Five were received in evidence.)

19 MR. DICK: At this time, the People call Teresa
20 McDaniel to the stand.

21 TERESA MCDANIEL,
22 called as a witness on behalf of the People, being first
23 duly sworn, was examined and testified as follows:

24 THE CLERK: Would you please state your name and
25 spell it for the record.

26 THE WITNESS: Teresa Deanne McDaniel.

27 T-E-R-E-S-A. D. M-C-D-A-N-I-E-L.

28 ///

1 DIRECT EXAMINATION

2 Q. MR. DICK: Ms. McDaniel, what do you do for a living?

3 A. I'm a parole agent for the California Department of
4 Corrections.

5 Q. How long have you been a parole officer?

6 A. I have been a parole officer since 1997.

7 Q. What are your general duties as a parole officer?

8 A. Supervise parolees in the community and make sure that
9 they obey the law.

10 Q. Just for the record, what is a parolee?

11 A. A parolee is a person that was convicted and sentenced
12 to state prison and released to the community.13 Q. Once they are released in the community, do they have
14 certain obligations as it relates to their parole officer?

15 A. Yes, sir.

16 Q. What is that?

17 A. They must first report to the parole agent and adhere
18 to the conditions of parole as well as the special
19 conditions of parole and as well as obey any law that is
20 required by them.21 Q. Upon their release from state prison, is every person
22 told they have to report to their parole officer?23 A. Yes, sir. Prior to being released from state prison,
24 they are instructed and they are -- they sign their
25 conditions of parole prior to being released instructing
26 them to report to the parole officer.

27 Q. How long after they are released?

28 A. The first working day following release.

1 Q. Have you ever heard of the phrase "absconding from
2 parole"?

3 A. Yes, sir.

4 Q. What does absconding from parole mean?

5 A. It means that the parolee was unavailable for parole
6 supervision and a warrant was issued and acted on.

7 Q. What are some of the reasons why a warrant may be
8 issued?

9 A. For the individual -- well, for the parole agent not
10 knowing where the person's whereabouts are.

11 Q. If a person never reports to their parole officer,
12 would that person be considered to have absconded?

13 A. Yes.

14 Q. What are the ramifications of absconding?

15 A. They are returned back to custody in some cases.

16 Q. Are there files kept on parolees?

17 A. Yes, sir. They are call field files.

18 Q. Are field files required by law?

19 A. They are required by the parole division I know.

20 Q. And that's a government division?

21 A. State.

22 Q. And are those files maintained in the regular course
23 of business?

24 A. Yes, sir.

25 Q. Are they required to be updated as soon as possible?

26 A. Yes, sir.

27 Q. Are they computerized as well?

28 A. The information, yes, I would say what we call parolee

1 tracking system, so the information they are given from the
2 institution is automatically put into a computer system and
3 our copies are kept in the parolee's field file.

4 Q. That's updated in the normal course of business?

5 A. Yes, sir.

6 Q. As part of government regulations?

7 A. Yes, sir.

8 Q. As part of your job, were you assigned a parolee by
9 the name of Steve Badue?

10 A. Yes, sir.

11 Q. Have you ever met Steve Badue?

12 A. No, sir.

13 Q. Do you know who he is?

14 A. No, sir.

15 Q. Did he ever report to you?

16 A. No, sir.

17 Q. Did you have an opportunity to review a file on Steve
18 Badue with a date of birth of January 4, 1966?

19 A. To my recollection, yes, sir.

20 Q. And did I actually call you on the telephone and
21 request for you to review that file?

22 A. Yes, sir.

23 Q. Did you in fact review the file?

24 A. Yes, sir.

25 Q. Was Mr. Badue in fact a parolee?

26 A. Yes, sir.

27 Q. Was he assigned to you?

28 A. Yes, sir.

1 Q. Did he ever report to you?

2 A. No, sir.

3 Q. When was he last released from prison from custody?

4 A. If I might refer to my notes, he was last released on
5 9/17/2002 to parole office, San Jose, Santa Clara County.

6 Q. And was that September or October of 2002?

7 A. His most recent release was September 17, 2002 but his
8 release prior to was October 10, 2001.

9 Q. On the October 10, 2001 release, had he -- let me
10 rephrase the question. The September 17, 2002, that was
11 after he had served time in another county and then he was
12 transferred to San Jose, is that correct?

13 A. He had served time in state prison for absconding
14 parole October 10 of 2001.

15 Q. So we are clear on the time line. I don't want to
16 talk about the October 10, 2001 release. Which county was
17 he released into?

18 A. He was released to Santa Clara County to the San Jose
19 parole office.

20 Q. Did he ever report to the San Jose parole office as of
21 October 10, 2001, after that date?

22 A. No, sir.

23 Q. Has he ever reported since that release on October 10,
24 2001?

25 A. No, sir.

26 Q. Was a warrant issued for his arrest?

27 A. Yes, sir, on October 11, 2001.

28 Q. Has parole had any contact with him after October 10,

1 2001 upon his release?

2 A. No, sir.

3 Q. Would it be fair to say that he absconded?

4 A. Yes, sir. That's correct.

5 MR. DICK: May I have a moment, Your Honor?

6 THE COURT: Yes.

7 (Pause in proceedings.)

8 Q. MR. DICK: Did you determine from what offense
9 Mr. Badue had been incarcerated for? Did you do that at
10 all?

11 A. I'm not sure I understand the question. Is that for
12 his original commitment offenses.

13 Q. The release from October 10 was on an original release
14 or parole violation?

15 A. On a parole violation.

16 Q. He had a previously parole violation, that's what he
17 was serving, not the original offense?

18 A. Yes, sir.

19 Q. Thank you.

20 MR. DICK: I have nothing further.

21 THE COURT: Cross examination.

22 MS. DANTO: No questions, Your Honor.

23 THE COURT: Is there any objection to excusing
24 this witness?

25 MS. DANTO: No objection.

26 MR. DICK: No, no objection, Your Honor.

27 THE COURT: You are excused.

28 FRANCIS GALLEGOS,

1 called as a witness on behalf of the People, being first
2 duly sworn, was examined and testified as follows:

3 THE CLERK: Would you please state your name and
4 spell it for the record.

5 THE WITNESS: Francis, F-R-A-N-C-I-S. Last name
6 Gallegos, G-A-L-L-E-G-O-S.

7 MR. DICK: Before I inquire, apologize to Court
8 and counsel. I have in my hand marked as People's Six which
9 appears to be a certified copy of a 969b packet. I would
10 ask that that be moved into evidence.

11 MS. DANTO: No objection.

12 THE COURT: People's exhibit marked Number Six is
13 received into evidence.

14 (People's Exhibit Number Six was received in
15 evidence.)

16 DIRECT EXAMINATION

17 Q. MR. DICK: Ms. Gallegos, what do you do for a living?

18 A. I work for the City of San Jose Police Department.

19 Q. What do you do for them?

20 A. I maintain the sex registration records.

21 Q. Are those sometimes referred as 290 records as well?

22 A. Correct.

23 Q. How long have you been maintaining the 290 records?

24 A. Approximately three years.

25 Q. Did you have any education or training to prepare you
26 for that?

27 A. Yes, I did.

28 Q. What is that?

1 A. I was trained in the 290 time, registration time to
2 maintain the files filed by alphabetical, last name first.
3 We maintain any change of addresses in that same file
4 records. I was also trained to read the printout such as
5 VCIN, V-C-I-N.

6 Q. What does that stand for?

7 A. Violent Crime Information Network.

8 Q. What is a VCIN?

9 A. VCIN is a registration area where all agencies within
10 the State of California update their records.

11 Q. So let's say that somebody registers in Riverside
12 County, would that then go into VCIN?

13 A. Yes.

14 Q. If someone comes into the San Jose Police Department,
15 does that then get registered into VCIN?

16 A. Correct.

17 Q. That's different than Megan's law database, correct?

18 A. No, it's the same one.

19 Q. Let me ask you this. The Megan's law database, that's
20 maintained by the Department of Justice, correct?

21 A. Correct.

22 Q. And the local police department, they are the one that
23 input the information into VCIN?

24 A. That's correct.

25 Q. Is VCIN then required by state law for the government
26 agency, the police department to be maintained in the normal
27 course of business?

28 A. Correct.

1 Q. And did you by my request run a VCIN for one Steve
2 Badue, a date of birth of January 4, 1966?

3 A. Yes, I did.

4 Q. Did you bring that to court today?

5 A. Yes, I did.

6 MR. DICK: Your Honor, I have in my hand what's
7 been marked as People's 11 for identification. I have shown
8 it to defense counsel. May I approach?

9 THE COURT: Yes, you may.

10 Could you give me the name of the document?

11 MR. DICK: VCIN.

12 Q. MR. DICK: Is this the certified copy of the VCIN for
13 one Steve Badue?

14 A. Yes, it is.

15 Q. When was that run?

16 A. That was this morning at 8:44.

17 Q. Based on the VCIN report, had Mr. Badue -- when was
18 the last time Mr. Badue updated his registration?

19 A. There is no registered address on file.

20 Q. That would mean he's only registered as a transient?

21 A. Either that or actually -- there is different reason,
22 either that or the person is in custody.

23 Q. When was -- has the person according to the VCIN, have
24 they registered since October 10 of 2001?

25 A. Not since that date, no.

26 Q. If a person's birthday had therefore been January 4,
27 did that person then miss their annual update?

28 A. Correct.

1 MR. DICK: Ask People's 11 be moved into evidence.

2 THE COURT: Any objection?

3 MS. DANTO: No.

4 THE COURT: People's Exhibit marked Number 11 is
5 received into evidence.

6 (People's Exhibit Number 11 was received in
7 evidence.)

8 Q. MR. DICK: Based on the VCIN, after October 1st, 2001
9 until March of 2002, had that person registered in any
10 county?

11 A. No.

12 Q. In the state?

13 Have you ever heard of a form called a SS 8102?

14 A. Yes.

15 Q. What is an 8102?

16 A. It's a registration annual update or change of address
17 form.

18 Q. How are those prepared? Let me rephrase the question.
19 Is there a set form that is used throughout the state as an
20 8102?

21 A. Yes.

22 Q. Is that also the registration form?

23 A. Correct.

24 Q. So if someone goes in to the San Jose Police
25 Department, that's the form that they fill out, correct?

26 A. That's correct.

27 Q. Once a person fills out the form, the 8102, how do the
28 records get maintained?

1 A. Once they complete the form, that form is updated into
2 both systems, our local system and CJIC and in VCIN. Once
3 they are updated, the form is sent to myself where I
4 maintain them by alphabetical name.

5 Q. Are there different colors of the forms?

6 A. No.

7 Q. Are some of the older forms white and some of the
8 newer ones yellow?

9 A. That may be possible.

10 Q. Did you go to the San Jose Police Department file for
11 Steve Badue?

12 A. Yes.

13 Q. And did you pull the 8102s for that person's file?

14 A. Yes, I did.

15 Q. Did you bring those to court today?

16 A. Yes, I did.

17 MR. DICK: Your Honor, I have in my hand what has
18 been marked as Seven, Eight and Nine for purposes of
19 identification. May I approach?

20 THE COURT: Yes, you may.

21 Q. MR. DICK: Showing you what has been marked People's
22 Seven, Eight and Nine, do you recognize what those are?

23 A. Yes, I do.

24 Q. What are those?

25 A. These are the registration forms.

26 Q. For?

27 A. For sex offenders.

28 Q. Are these the files from -- are those the records from

1 Steve Badue's file?

2 A. Yes.

3 Q. Did you bring those to court today?

4 A. Yes.

5 Q. Were those the only forms in the file?

6 A. Correct.

7 Q. What is the most recent date that Mr. Badue registered
8 with the San Jose Police Department?

9 A. 6/18/01.

10 Q. On the back of the 8102, is there a place for someone
11 to sign, give their signature?

12 A. Yes.

13 Q. And where they give their signature, does this list
14 the requirements that a person has to do under Penal Code
15 Section 290?

16 A. That's correct.

17 Q. On that code on the back of that form, the 8102 dated
18 June 18, 2001, does that have a line that indicates a person
19 has to register annually on their birthday?

20 A. Yes.

21 Q. Does it also have a line that someone has to register
22 within five days from their release from custody?

23 A. Correct.

24 Q. Are there any other forms, 8102 forms in Mr. Badue's
25 file?

26 A. Yes, there is.

27 Q. Beside the ones you brought today this court?

28 A. No.

1 Q. And when you said yes to the first question, you were
2 referring to People's Eight and Nine?

3 A. Correct.

4 MR. DICK: Your Honor, I ask that People's Seven,
5 Eight and Nine be moved into evidence.

6 MS. DANTO: No objection.

7 THE COURT: Can you identify them by date.

8 THE WITNESS: Certainly. Seven is 6/18/01. Eight
9 is September 16 of '99. And Nine is June 14 of '99.

10 THE COURT: People's Exhibits marked Seven, Eight
11 and Nine are received into evidence.

12 (People's Exhibits Number Seven, Eight and Nine
13 were received in evidence.)

14 Q. MR. DICK: When a person fills out an 8102, do they
15 have to sign their name on the bottom?

16 A. Yes.

17 Q. Do they have to give a fingerprint?

18 A. Yes.

19 Q. Is their picture taken?

20 A. Correct.

21 MR. DICK: May I have a moment, Your Honor?

22 THE COURT: Yes.

23 (Pause in proceedings.)

24 Q. MR. DICK: Is there a database where -- let me
25 rephrase the question. When a person comes in to fill out
26 their -- updates their 8102 and their picture is taken, does
27 that picture get sent anywhere?

28 A. Yes, it gets sent to the Department of Justice.

1 Q. And is the Department of Justice then required to
2 place that picture as part of the Megan's law database?

3 A. Correct.

4 Q. Do you have access to the California sex offender
5 database?

6 A. Yes, I do.

7 Q. Are you able to download updates of those -- of that
8 information?

9 A. Could you please --

10 Q. That was very confusing. Do you have access to that
11 database?

12 A. The Megan's law database?

13 Q. Yes.

14 A. Yes, I do.

15 Q. Do you also have access to the California sex offender
16 database put up by the attorney general?

17 A. Yes.

18 Q. Great. Did you in fact bring a copy of that today to
19 court?

20 A. I did.

21 MR. DICK: Your Honor, I have in my hand what has
22 been marked as People's 10 for identification. May I
23 approach?

24 THE COURT: Yes.

25 Q. MR. DICK: Showing you what's been marked People's 10
26 for identification, do you recognize what that is?

27 A. Yes, I do.

28 Q. What is People's 10?

1 A. It is a photo with information on last Badue, first of
2 Steve.

3 Q. Where does that come from?

4 A. This comes from the State of California, Department of
5 Justice, Megan's law.

6 Q. The database?

7 A. Correct.

8 Q. Megan's law database. That information that's
9 provided by the local agencies?

10 A. Correct.

11 Q. When did you obtain a copy of that?

12 A. This morning.

13 Q. That's a certified copy?

14 A. Yes, it is.

15 MR. DICK: Ask that People's 10 be moved into
16 evidence.

17 MS. DANTO: No objection.

18 THE COURT: People's Exhibit marked 10 is received
19 into evidence.

20 (People's Exhibit number 10 was received in
21 evidence.)

22 MR. DICK: I have no further questions.

23 THE COURT: Cross examination.

24 MS. DANTO: No questions, Your Honor.

25 THE COURT: Is there any objection to excusing
26 this witness?

27 MS. DANTO: No objection.

28 THE COURT: Ms. Gallegos, you are excused.

1 THE WITNESS: Thank you.

2 MR. DICK: Your Honor, I have two other witnesses.
3 I know that one -- well, let me see if they are in the
4 hallway.

5 (Pause in proceedings.)

6 MR. DICK: People call Officer Keo to the stand.

7 TRAK KEO,

8 called as a witness on behalf of the People, being first
9 duly sworn, was examined and testified as follows:

10 THE CLERK: Would you please state your name and
11 spell it for the record.

12 THE WITNESS: First name T-R-A-K. K-E-O.

13 DIRECT EXAMINATION

14 Q. MR. DICK: What is your current occupation and
15 assignment?

16 A. City of Stockton police officer.

17 Q. How long have you been a police officer?

18 A. A year and a half.

19 Q. What is your current assignment?

20 A. Field services. We call patrol.

21 Q. Were you on duty on March 7 of -- March 6 of 2002 at
22 approximately 11 p.m.?

23 A. Yes.

24 Q. Do you recall where you were on that date at that
25 time?

26 A. About Church and Sonoma.

27 Q. That's in the city of Stockton?

28 A. Yes.

1 Q. What county is that?

2 A. San Joaquin.

3 Q. For the record, can you tell us approximately how far
4 Stockton is from the City of San Jose?

5 A. I would say about a good hour, 45 minute drive.

6 Q. Did you contact the subject on that date at that time
7 at that location?

8 A. Yes, sir.

9 Q. Is that person in court today?

10 A. Yes, sir.

11 Q. Can you please identify where that person is sitting,
12 what he's wearing?

13 A. Wearing the orange clothing there.

14 Q. When you say over there --

15 A. Right next to the lady in the black shirt.

16 MS. DANTO: I'll stipulate that he's identified my
17 client.

18 THE COURT: I will accept the stipulation.

19 Q. MR. DICK: Did you have a conversation with the
20 defendant?

21 A. Yes.

22 Q. Did he give you a birthday? Did he give you a name?

23 A. When I made contact with him, he gave me his name as
24 James Pierce of birthday March 15, '61. And we ran the name
25 in our computer system, nothing come up under that name.

26 Q. Let me slow you down. When you say you ran through a
27 computer system, what computer system did you run him
28 through?

1 A. Our computer system is a database consisting of
2 anybody that have been stopped or have any kind of warrants
3 in the county, it all comes up under that system.

4 Q. That person's name didn't come up at all?

5 A. No.

6 THE COURT: What was that name?

7 THE WITNESS: James Pierce. P-I-E-R-C-E.

8 Q. MR. DICK: What date of birth did he give?

9 A. March 15 of '61.

10 Q. Did you tell him that you thought he was giving you a
11 false name?

12 A. I told him that the name didn't come out on our
13 computer system and he said that his mother could verify
14 what his name is and she was living at 921 South San Joaquin
15 Street. And my partner and I drove to the location and met
16 with the lady there. She came out and met with us while we
17 parked the patrol car on the street and she said that was
18 her son --

19 MS. DANTO: I'm going to object as hearsay.

20 THE COURT: The object is sustained.

21 Q. MR. DICK: Who was your partner?

22 A. Officer Aguilar.

23 Q. Did you make a determination if the defendant had
24 given you a false name?

25 A. Yes. It was kind of unusual. In the area where the
26 defendant was is a very high narcotic area. I had been
27 working the area for approximately six months at the time
28 and I dealt with a lot of people --

1 Q. Let me ask you a question. Did you make a
2 determination that the defendant was in fact not James
3 Pierce?

4 A. It's like I said, it's very unusual for somebody not
5 to be in our computer system who hangs in that area.

6 Q. After you spoke to the defendant, spoke to the
7 defendant's mother, did you make the determination of the
8 defendant's true name?

9 A. Yes.

10 Q. Was the defendant booked into custody?

11 A. Yes.

12 Q. At the time he was booked into custody, did he give a
13 different name?

14 A. Yes.

15 Q. What name did he give?

16 A. Actually he didn't really give me a name. His mom
17 did.

18 Q. And what name did you use to book him under?

19 A. Steve Badue.

20 Q. Is that the name that you used to book him?

21 A. Yes.

22 Q. Did you determine a birthdate for Steve Badue?

23 A. Yes.

24 Q. What was that?

25 A. January 4, 1966.

26 MR. DICK: May I have a moment, Your Honor?

27 THE COURT: Yes.

28 (Pause in proceedings.)

1 MR. DICK: I have nothing further.

2 THE COURT: Cross examination.

3 MS. DANTO: No questions, Your Honor.

4 THE COURT: Is there any objection to excusing
5 this witness?

6 MS. DANTO: No.

7 THE COURT: Officer Keo, you are excused.

8 MR. DICK: Your Honor, my final witness is the
9 fingerprint examiner regarding the priors. If I can have
10 one moment to see if he's outside in the hallway. I don't
11 think he is.

12 THE COURT: Yes.

13 (Pause in proceedings.)

14 MR. DICK: He's not here.

15 Your Honor, my last witness is a witness who has
16 gone through the certified documents regarding the
17 defendant's priors and compared fingerprints. I told him
18 not to be here until 10. I can give a call over to his
19 office.

20 THE COURT: We'll take a five-minute recess.

21 Court is in recess.

22 (A short break was taken, after which the
23 following proceedings were had:)

24 THE COURT: The Court is again in session and
25 everyone is present.

26 Please proceed, Mr. Dick.

27 MR. DICK: Your Honor, I have in my hand what's
28 been marked People's 12 and 13 for identification. They

1 appear to be certified copies of booking photos. Ask that
2 they be moved into evidence as People's 12 and 13.

3 MS. DANTO: No objection.

4 THE COURT: People's Exhibits marked 12 and 13 are
5 received into evidence.

6 (People's Exhibits Number 12 and 13 were received
7 in evidence.)

8 MR. DICK: At this time the People call Richard
9 Peretti to the stand.

10 RICHARD PERETTI,

11 called as a witness on behalf of the People, being first
12 duly sworn, was examined and testified as follows:

13 THE CLERK: Would you please state your name and
14 spell it for the record.

15 THE WITNESS: Richard Peretti. P-E-R-E-T-T-I.

16 DIRECT EXAMINATION

17 Q. MR. DICK: Sir, what do you do for a living?

18 A. I'm a latent fingerprint examiner with the San Jose
19 Police Department.

20 Q. What is a latent fingerprint examiner?

21 A. We examine fingerprints that are submitted from
22 various agencies and booking authorities. We also do
23 comparisons of fingerprints that are developed at crime
24 scenes and submitted for comparison.

25 Q. How long have you been so employed?

26 A. With San Jose Police Department, two years. I was
27 employed with the Contra Costa County Sheriff's Department
28 for three and a half years prior.

1 Q. You have doing this for five and a half years?

2 A. Yes.

3 Q. Have you had educational training in how to compare
4 and read latent fingerprints?

5 A. Yes, I have.

6 MR. DICK: Counsel, will you stipulate that
7 Richard Peretti is a qualified expert in the ability to
8 analyze and compare latent fingerprints?

9 MS. DANTO: I'm prepared to stipulate that he can
10 testify as an expert in this area, Your Honor.

11 THE COURT: I will accept the stipulation.

12 Q. MR. DICK: Sir, did you -- when you are comparing
13 fingerprints, what are some of the things that you are
14 looking for?

15 A. We are looking to make sure that the fingerprints have
16 the same topographical relationship, they are the same
17 patterns or that they be loops, whirls. They are looking
18 for unique characteristics, scars, deformities. We are
19 looking at the ridge detail to see if it has corresponding
20 points in both the known and unknown or the two prints that
21 are being compared. We look for minutia or points which are
22 unique items such as ending ridges, the splitting of a
23 ridge, anything that would have similarities or noticeable
24 dissimilarities, where information is lacking or is
25 different.

26 Q. What is a ridge?

27 A. A ridge is the -- on your feet and your hands, you
28 have friction ridge skin which is areas where there are

1 mounds or valleys. Very similar to rubber stamp that you
2 would use in marking paper, when you leave a latent or an
3 inked fingerprint, the high portion, the ridges, are
4 recorded leaving individual and unique characteristics.

5 Q. When a person, if they are being inked and leave a
6 fingerprint, that print will show the ridges on the print,
7 is that correct?

8 A. Yes.

9 Q. Is it true that every person has unique fingerprints?

10 A. Yes.

11 Q. Did you review a series of documents pursuant to my
12 request?

13 A. Yes, I did.

14 Q. When you reviewed those documents, how do you indicate
15 that you have reviewed them? Do you mark them?

16 A. Upon completing the evaluation, yes, we mark -- I mark
17 my initials next to the prints in which I compared.

18 MR. DICK: Your Honor, may I approach?

19 THE COURT: You may.

20 Q. MR. DICK: I'm going to show you what's been marked
21 People's Six and moved into evidence. That appears to be a
22 969 packet. Did you review the fingerprints on that packet?

23 A. Yes.

24 Q. And how do you know that?

25 A. I have my initials and the date that I evaluated them
26 near the right thumb on the fingerprint card.

27 MR. DICK: Your Honor, I have in hand what's been
28 marked as People's 14 for identification. I have shown to

1 defense counsel. It appears to be a booking photograph and
2 fingerprints from one Steve Badue.

3 Q. MR. DICK: Sir, showing you what's been marked
4 People's 14, have you reviewed the fingerprints on People's
5 14?

6 A. Yes.

7 Q. And again as your initials on that?

8 A. Yes, initials and dates.

9 MR. DICK: Your Honor, I have in my hand what's
10 been marked People's 15 for identification. I have shown
11 this to defense counsel. It appears to be a certified
12 booking form from the Stockton Police Department for one
13 Steve Kenneth Badue.

14 Q. MR. DICK: Sir, did you review the fingerprints on
15 that?

16 A. Yes.

17 Q. And again your initials are on that?

18 A. Yes.

19 MR. DICK: Your Honor, I have in my hand what has
20 been marked People's 16, shown to defense counsel. It
21 appears to be a certified copy of a booking photo for a
22 Steve Badue for 314 out of Stockton.

23 Q. MR. DICK: Showing you People's 16, did you review
24 People's 16?

25 A. Yes, I have my initials on there as well.

26 THE COURT: Mr. Dick, I'm sorry. For Exhibit 15,
27 the booking form, was that for a particular conviction or
28 arrest.

1 MR. DICK: That is a conviction date of 3/19/98
2 for 314.

3 Q. MR. DICK: Sir, I have in my hand what's been marked
4 as People's 17. Appears to be a booking photo for a 314 out
5 of San Joaquin County. Did you review these documents?

6 A. Yes, I have initialled those documents as well.

7 MR. DICK: Your Honor, I have in my hand what has
8 been marked as people's 18, a certified copy of a SS 8102.
9 I believe that this will be the same document, a photocopy
10 of People's Seven, that's been moved into evidence.

11 Q. MR. DICK: Sir, did you review People's 18?

12 A. Yes, I did.

13 Q. How do you know that?

14 A. My initials and date.

15 MR. DICK: I would ask that People's 14 through 18
16 be moved into evidence.

17 MS. DANTO: I have no objection.

18 THE COURT: People's Exhibits marked 14, 15, 16,
19 17 and 18 are received into evidence.

20 (People's Exhibits Number 14, 15, 16, 17 and 18
21 were received in evidence.)

22 Q. MR. DICK: Based on your review of the documents, did
23 you reach a conclusion if one or different people made the
24 prints on People's 14 through 18?

25 A. Yes, I reached a conclusion.

26 Q. What is that conclusion?

27 A. All the prints were made by the same individual.

28 Q. And how do you know that?

1 A. All of the prints were examined and compared against
2 each other. I found no dissimilarities in any of the prints
3 that they would have come from a different individual.

4 Q. In other words, it's the same print?

5 A. Yes.

6 MR. DICK: Can I have one moment, Your Honor?

7 THE COURT: Yes.

8 (Pause in proceedings.)

9 MR. DICK: I have nothing further.

10 THE COURT: Cross examination.

11 MS. DANTO: No questions, Your Honor.

12 THE COURT: Is there any objection to excusing
13 Mr. Peretti?

14 MS. DANTO: No.

15 THE COURT: Mr. Peretti, you are excused.

16 MR. DICK: Your Honor, if I can inquire from your
17 clerk if all the People's exhibits have been moved into
18 evidence.

19 THE CLERK: They have all been admitted.

20 MR. DICK: Your Honor, just for the record, I
21 would ask the Court to take judicial notice that the City of
22 San Jose is in the County of Santa Clara. I believe that
23 one of the two witnesses testified to the County of Santa
24 Clara but the other one did not. I ask the Court to take
25 judicial notice of that.

26 THE COURT: Any objection?

27 MS. DANTO: No.

28 THE COURT: The Court will take judicial notice of

1 that fact.

2 MR. DICK: Thank you, Your Honor. The People
3 rest.

4 THE COURT: Does the defense wish to present
5 evidence?

6 (Discussion held off the record.)

7 MS. DANTO: Your Honor, at this point the defense
8 rests.

9 THE COURT: We will have closing argument. I
10 don't know if counsel are prepared at this time. If you
11 would like a recess.

12 MR. DICK: People are ready.

13 THE COURT: You are ready.

14 Mr. Dick, would you please take it slowly.

15 MR. DICK: I apologize to the court reporter. I
16 know that I speak way too quickly. I am told by many a
17 court reporter that.

18 The laws under 290 are very clear. They are
19 outlined on the back of the 8102 form which the defendant
20 has filled out on at least three separate occasions. So he
21 knows of his requirements and those requirements include
22 registering within five days upon your release from custody
23 and registration on your birthday.

24 The defendant last registered in San Jose on June
25 18 of 2000 -- actually 2001. I apologize. He is then
26 placed back in custody on a parole violation. He is
27 released to Santa Clara County on October 10 of 2001. He
28 does not update his registration within the five days upon

1 his release.

2 He then fails to register on his birthday which is
3 the basis for the violation in Count One when he does not
4 register within five working days of his birthday of January
5 4. The certified documents, and there are numerous ones,
6 that I have supplied to the defendant have the defendant's
7 picture and birthdate on them and they are all the same and
8 they are all consistent. He do not register within five
9 working days of his birthday. He does not register here in
10 San Jose as there are no updated documents in the 8102 file
11 and also he does not register anywhere in the state. There
12 is no update on his VCIN.

13 He is finally found in March of 2002, March 7,
14 March 6, late at night, approximately eleven o'clock at
15 night. He gives a false name. He has -- we know that it's
16 willful failure to appear because he absconds from parole.
17 He gives a false name. We know it's a knowing failure to
18 appear, failure to register because he had filled out the
19 8102 previously.

20 There are certified documents I provided to the
21 Court that indicate the defendant has suffered prior
22 convictions for 314, for a 290 and also pursuant to
23 certified documents he has not been free from incarceration
24 for the last five years pursuant to 667.5(b) due to a
25 conviction for an 11350.

26 Based on this, the People would suggest to the
27 Court that the defendant has violated the elements of Penal
28 Code Section 290, he has suffered a prior conviction and he

1 has suffered a prior conviction and has not remained free of
2 incarceration for the last five years. I would ask the
3 Court to find the defendant guilty as charged.

4 THE COURT: You didn't say the prior conviction
5 for the 667.5(b) was 11550?

6 MR. DICK: I said 11350. It's 11350.

7 THE COURT: Yes.

8 MR. DICK: Yes, it is an 11350. I apologize if I
9 said 11550.

10 MS. DANTO: Your Honor, I'm prepared to submit it.

11 THE COURT: I will recess for a little bit, review
12 all of the documents and I will return with a decision.

13 (A short break was taken, after which the
14 following proceedings were had:)

15 THE COURT: The Court is again in session in the
16 matter of the People of the State of California versus Steve
17 Badue. Both counsel are present along with the defendant.

18 I have reviewed all of the documents and have
19 considered all of the evidence in this case and I find that
20 the People have met their burden of proof beyond a
21 reasonable doubt. And I find that the defendant Steve Badue
22 is guilty in Count One of a violation of Penal Code Section
23 290(g)(2) and I find that the allegation pursuant to Penal
24 Code Section 667.5(b) is true.

25 This matter is referred to the probation
26 department for a full presentence investigation and report.

27 Is time waived or not waived?

28 MS. DANTO: No.

1 When do you do sentencing?

2 THE COURT: Thursday afternoons at 1:30.

3 MS. DANTO: That would be --

4 THE COURT: The matter is set for sentencing for
5 March 6 at 1:30 in this department.

6 MS. DANTO: Thank you, Judge.

7 MR. DICK: Thank you, Your Honor.

8 THE COURT: You are welcome.

9 (Whereupon, court was adjourned on this matter.)

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1 STATE OF CALIFORNIA)
2) ss.
3 COUNTY OF SANTA CLARA)

4
5 I, CINDI M. JOHNSON, hereby certify: That I was
6 appointed by the Court to act as the Court Reporter in the
7 above-entitled action; that I reported the same in stenotype
8 and thereafter transcribed the same into typewriting as
9 appears by the foregoing transcript; that said transcript is
10 a full, true and correct statement of this proceeding.

11 In said capacity, I have adhered to Civil Code of
12 Procedure Section 237(a)(2), Sixth Appellate District
13 Miscellaneous Order 96-2, by sealing through redaction all
14 references to juror identifying information, including but
not limited to names, addresses and telephone numbers.

15 Executed April 23, 2003, at San Jose, California.

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17 
CINDI M. JOHNSON, CSR
18 CERTIFICATE No. 10125
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1 TO THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
2 IN AND FOR THE SIXTH APPELLATE DISTRICT
3

4 PEOPLE OF THE STATE
5 OF CALIFORNIA,

6 Plaintiff-Respondent,

7 } NO. CC241061
8 }
9 } SANTA CLARA COUNTY
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16 -VS-

17 STEVEN BADUE,

18 Defendant-Appellant.

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IN THE SUPERIOR COURT FOR THE STATE OF CALIFORNIA
SANTA CLARA COUNTY JUDICIAL DISTRICT
BEFORE THE HONORABLE RISE PICHON, JUDGE
DEPARTMENT NO. 36

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THE PEOPLE OF
THE STATE OF CALIFORNIA, }
Plaintiff, }
-vs- }
STEVEN BADUE, }
Defendant. }
NO. CC241061
Sentencing Hearing

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REPORTERS TRANSCRIPT OF PROCEEDINGS

March 6, 2003

APPEARANCES:

FOR THE PEOPLE: OFFICE OF THE DISTRICT ATTORNEY
STEVEN DICK, D.D.A.

FOR THE DEFENDANT: OFFICE OF THE PUBLIC DEFENDER
RANDY DANTO, D.P.D.

OFFICIAL COURT REPORTER: JOANNE M. ROCHA, CSR 7655

1 SAN JOSE FACILITY

DEPARTMENT 36

2 PROCEEDINGS3 THE COURT: This is the matter of the People of
4 the State of California versus Steven Badue.5 MS. DANTO: Your Honor, Mr. Badue is present in
6 custody. I am Randy Danto appearing on his behalf.

7 MS. DICK: Steven Dick for the People.

8 THE COURT: No middle name?

9 THE DEFENDANT: Yes. No middle name.

10 THE COURT: Steven Badue?

11 THE DEFENDANT: Yes.

12 THE COURT: The matter is on calendar for
13 sentencing. Do you waive arraignment for judgment and
14 sentence?

15 MS. DANTO: Yes, your Honor.

16 THE COURT: Is there any legal cause why judgment
17 should not be imposed?

18 MS. DANTO: No.

19 THE COURT: Do you waive the five-day rule
20 regarding receipt of the probation report?

21 MS. DANTO: Yes.

22 THE COURT: Have both counsel had the opportunity
23 to review the report?

24 MS. DANTO: Yes, your Honor.

25 MS. DICK: Yes, your Honor.

26 THE COURT: I have read and considered the
27 probation officer's report including the attachments, the
28 statements in mitigation and aggravation and criminal

1 history. The Court's tentative decision is to deny probation
2 and impose two years in the state prison. Two years is the
3 middle term and the punishment of one additional year
4 pursuant to Penal Code Section 667.5, Subsection B, will be
5 stricken pursuant to Penal Code Section 1385 for the reason
6 that the Defendant has already served eleven months on a
7 violation of parole which included this offense.

8 Counsel, do you wish to be heard?

9 MS. DANTO: No, your Honor. We are prepared to
10 submit it.

11 MR. DICK: Submitted, your Honor.

12 THE COURT: Probation is not being granted in
13 this case. After considering the criteria set out in the
14 Rules of Court, probation is not being granted because the
15 Defendant has demonstrated that he is not willing to comply
16 with the conditions of probation. He has violated parole
17 three times in the first year following his release from
18 prison and he was on parole at the time of this offense. At
19 this time, probation is denied.

20 Mr. Badue, you are committed to the California
21 Department of Corrections for two years. Two years is the
22 middle term. You have the following credits: 144 actual days
23 plus 72 days 419 credits for a total of 216 days credit for
24 time served. You are advised that you are subject to parole
25 supervision for up to three years. There will be no General
26 Fund Fine and you are ordered not to possess a firearm
27 pursuant to Penal Code 12021, a restitution fine of
28 \$400.00 -- restitution fine in the amount of \$400.00 is

1 imposed pursuant to Penal Code Section 1202.4, Subsection B,
2 an additional restitution fine in the amount of \$400.00 is
3 imposed and suspended pursuant to Penal Code Section 1202.45.
4 Attorney's fees are waived.

5 And Mr. Badue, I will advise you of your appeal
6 rights.

7 MS. DANTO: Your Honor, my client has prepared
8 his own notice of appeal which I would like to file at this
9 time with your clerk.

10 THE COURT: All right. Is there anything else on
11 this case?

12 MS. DICK: No. Thank you, your Honor.

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1 STATE OF CALIFORNIA)

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3 COUNTY OF SANTA CLARA)

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6 I, JOANNE M. ROCHA, CSR, do hereby certify:

7 That I am a duly appointed and acting shorthand
8 reporter of the Superior Court of the State of California in
9 and for the County of Santa Clara;

10 That the foregoing proceedings were reported by
11 me in stenotype at the time and place mentioned and
12 thereafter reduced to typewriting under my direction;

13 That said transcript is a true and correct
14 statement of the proceedings and evidence given and had in
15 said matter to the best of my ability.

16 In said capacity, I have adhered to Civil Code of
17 Procedure Section 237(A)(2), Sixth Appellate District
18 miscellaneous order 96-2, by sealing through redaction all
19 references to juror identifying information, including but
20 not limited to names, addresses and telephone numbers.

21

22 DATED: This 10th day of April 2003.

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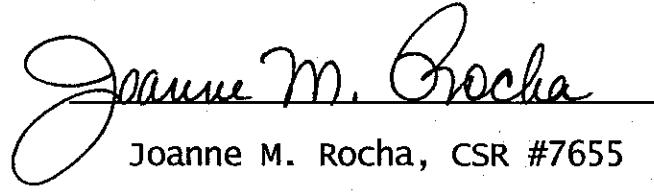
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Joanne M. Rocha, CSR #7655